

1 (f) AN AGREEMENT MAY NOT:

2 (1) PROVIDE FOR APPLICATION OF THE LAW OF ANY JURISDICTION  
3 OTHER THAN THE UNITED STATES AND THIS STATE;

4 (2) EXCEPT AS PERMITTED BY THE UNIFORM ARBITRATION ACT,  
5 PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S., CONTAIN A PROVISION THAT  
6 MODIFIES OR LIMITS OTHERWISE AVAILABLE FORUMS OR PROCEDURAL  
7 RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY, THAT ARE GENERALLY  
8 AVAILABLE TO THE INDIVIDUAL UNDER LAW OTHER THAN THIS PART 2;

9 USC 2  
on 788

9 (3) CONTAIN A PROVISION THAT RESTRICTS THE INDIVIDUAL'S  
10 REMEDIES UNDER THIS PART 2 OR LAW OTHER THAN THIS PART 2; OR

11 (4) CONTAIN A PROVISION THAT:

12 (A) LIMITS OR RELEASES THE LIABILITY OF ANY PERSON FOR NOT  
13 PERFORMING THE AGREEMENT OR FOR VIOLATING THIS PART 2; OR

14 (B) INDEMNIFIES ANY PERSON FOR LIABILITY ARISING UNDER THE  
15 AGREEMENT OR THIS PART 2.

16 (g) ALL RIGHTS AND OBLIGATIONS SPECIFIED IN SUBSECTION (d) OF  
17 THIS SECTION AND SECTION 12-14.5-220 EXIST EVEN IF NOT PROVIDED IN  
18 THE AGREEMENT. A PROVISION IN AN AGREEMENT THAT VIOLATES  
19 SUBSECTION (d), (e), OR (f) OF THIS SECTION IS VOID.

20 (14) **12-14.5-220. Cancellation of agreement - waiver.** (a) AN  
21 INDIVIDUAL MAY CANCEL AN AGREEMENT BEFORE MIDNIGHT OF THE THIRD  
22 BUSINESS DAY AFTER THE INDIVIDUAL ASSENTS TO IT, UNLESS THE  
23 AGREEMENT DOES NOT COMPLY WITH SUBSECTION (b) OF THIS SECTION OR  
24 SECTION 12-14.5-219 OR 12-14.5-228, IN WHICH EVENT THE INDIVIDUAL  
25 MAY CANCEL THE AGREEMENT WITHIN THIRTY DAYS AFTER THE  
26 INDIVIDUAL ASSENTS TO IT. TO EXERCISE THE RIGHT TO CANCEL, THE  
27 INDIVIDUAL SHALL GIVE NOTICE IN A RECORD TO THE PROVIDER. NOTICE

1 BY MAIL IS GIVEN WHEN MAILED.

2 (b) AN AGREEMENT SHALL BE ACCOMPANIED BY A FORM THAT  
3 CONTAINS IN BOLD-FACED TYPE, SURROUNDED BY BOLD BLACK LINES:

4 **NOTICE OF RIGHT TO CANCEL**

5 YOU MAY CANCEL THIS AGREEMENT, WITHOUT ANY  
6 PENALTY OR OBLIGATION, AT ANY TIME BEFORE MIDNIGHT  
7 OF THE THIRD BUSINESS DAY THAT BEGINS THE DAY AFTER  
8 YOU AGREE TO IT BY ELECTRONIC COMMUNICATION OR BY  
9 SIGNING IT.

10 TO CANCEL THIS AGREEMENT DURING THIS PERIOD,  
11 SEND AN E-MAIL TO *(E-MAIL ADDRESS OF PROVIDER)* OR  
12 MAIL OR DELIVER A SIGNED, DATED COPY OF THIS NOTICE,  
13 OR ANY OTHER WRITTEN NOTICE TO *(NAME OF PROVIDER)*  
14 AT *(ADDRESS OF PROVIDER)* BEFORE MIDNIGHT ON  
15 *(DATE)*.

16 IF YOU CANCEL THIS AGREEMENT WITHIN THE 3-DAY  
17 PERIOD, WE WILL REFUND ALL MONEY YOU ALREADY HAVE  
18 PAID US.

19 YOU ALSO MAY TERMINATE THIS AGREEMENT AT  
20 ANY LATER TIME, BUT WE ARE NOT REQUIRED TO REFUND  
21 FEES YOU HAVE PAID US.

22 I CANCEL THIS AGREEMENT,

23 \_\_\_\_\_

24 *PRINT YOUR NAME*

25 \_\_\_\_\_

26 *SIGNATURE*

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(c) IF A PERSONAL FINANCIAL EMERGENCY NECESSITATES THE DISBURSEMENT OF AN INDIVIDUAL'S MONEY TO ONE OR MORE OF THE INDIVIDUAL'S CREDITORS BEFORE THE EXPIRATION OF THREE DAYS AFTER AN AGREEMENT IS SIGNED, AN INDIVIDUAL MAY WAIVE THE RIGHT TO CANCEL. TO WAIVE THE RIGHT, THE INDIVIDUAL SHALL SEND OR DELIVER A SIGNED, DATED STATEMENT IN THE INDIVIDUAL'S OWN WORDS DESCRIBING THE CIRCUMSTANCES THAT NECESSITATE A WAIVER. THE WAIVER SHALL EXPLICITLY WAIVE THE RIGHT TO CANCEL. A WAIVER BY MEANS OF A STANDARD FORM RECORD IS VOID.

20 **12-14.5-221. Required language.** UNLESS THE ADMINISTRATOR, BY RULE, PROVIDES OTHERWISE, THE DISCLOSURES AND DOCUMENTS REQUIRED BY THIS PART 2 SHALL BE IN ENGLISH. IF A PROVIDER COMMUNICATES WITH AN INDIVIDUAL PRIMARILY IN A LANGUAGE OTHER THAN ENGLISH, THE PROVIDER SHALL FURNISH A TRANSLATION INTO THE OTHER LANGUAGE OF THE DISCLOSURES AND DOCUMENTS REQUIRED BY THIS PART 2.

21 **12-14.5-222. Trust account.** (a) ALL MONEY PAID TO A PROVIDER BY OR ON BEHALF OF AN INDIVIDUAL PURSUANT TO A PLAN FOR DISTRIBUTION TO CREDITORS IS HELD IN TRUST. WITHIN TWO BUSINESS DAYS AFTER RECEIPT, THE PROVIDER SHALL DEPOSIT THE MONEY IN A TRUST ACCOUNT ESTABLISHED FOR THE BENEFIT OF INDIVIDUALS TO WHOM THE PROVIDER IS FURNISHING DEBT-MANAGEMENT SERVICES.

(b) MONEY HELD IN TRUST BY A PROVIDER IS NOT PROPERTY OF THE PROVIDER OR ITS DESIGNEE. THE MONEY IS NOT AVAILABLE TO CREDITORS OF THE PROVIDER OR DESIGNEE, EXCEPT AN INDIVIDUAL FROM WHOM OR ON WHOSE BEHALF THE PROVIDER RECEIVED MONEY, TO THE

1 EXTENT THAT THE MONEY HAS NOT BEEN DISBURSED TO CREDITORS OF  
2 THE INDIVIDUAL.

3 (c) A PROVIDER SHALL:

4 (1) MAINTAIN SEPARATE RECORDS OF ACCOUNT FOR EACH  
5 INDIVIDUAL TO WHOM THE PROVIDER IS FURNISHING DEBT-MANAGEMENT  
6 SERVICES;

7 (2) DISBURSE MONEY PAID BY OR ON BEHALF OF THE INDIVIDUAL  
8 TO CREDITORS OF THE INDIVIDUAL AS DISCLOSED IN THE AGREEMENT;  
9 EXCEPT THAT:

10 (A) THE PROVIDER MAY DELAY PAYMENT TO THE EXTENT THAT A  
11 PAYMENT BY THE INDIVIDUAL IS NOT FINAL; AND

12 (B) IF A PLAN PROVIDES FOR REGULAR PERIODIC PAYMENTS TO  
13 CREDITORS, THE DISBURSEMENT SHALL COMPLY WITH THE DUE DATES  
14 ESTABLISHED BY EACH CREDITOR; AND

15 (3) PROMPTLY CORRECT ANY PAYMENTS THAT ARE NOT MADE OR  
16 THAT ARE MISDIRECTED AS A RESULT OF AN ERROR BY THE PROVIDER OR  
17 OTHER PERSON IN CONTROL OF THE TRUST ACCOUNT AND REIMBURSE THE  
18 INDIVIDUAL FOR ANY COSTS OR FEES IMPOSED BY A CREDITOR AS A RESULT  
19 OF THE FAILURE TO PAY OR MISDIRECTION.

20 (d) A PROVIDER MAY NOT COMMINGLE MONEY IN A TRUST  
21 ACCOUNT ESTABLISHED FOR THE BENEFIT OF INDIVIDUALS TO WHOM THE  
22 PROVIDER IS FURNISHING DEBT-MANAGEMENT SERVICES WITH MONEY OF  
23 OTHER PERSONS.

24 (e) A TRUST ACCOUNT SHALL AT ALL TIMES HAVE A CASH BALANCE  
25 EQUAL TO THE SUM OF THE BALANCES OF EACH INDIVIDUAL'S ACCOUNT.

26 (f) IF A PROVIDER HAS ESTABLISHED A TRUST ACCOUNT PURSUANT  
27 TO SUBSECTION (a) OF THIS SECTION, THE PROVIDER SHALL RECONCILE THE

*or greater than*

1 TRUST ACCOUNT AT LEAST ONCE A MONTH. THE RECONCILIATION SHALL  
2 COMPARE THE CASH BALANCE IN THE TRUST ACCOUNT WITH THE SUM OF  
3 THE BALANCES IN EACH INDIVIDUAL'S ACCOUNT. IF THE PROVIDER OR ITS  
4 DESIGNEE HAS MORE THAN ONE TRUST ACCOUNT, EACH TRUST ACCOUNT  
5 SHALL BE INDIVIDUALLY RECONCILED.

6 (g) IF A PROVIDER DISCOVERS, OR HAS A REASONABLE SUSPICION  
7 OF, EMBEZZLEMENT OR OTHER UNLAWFUL APPROPRIATION OF MONEY  
8 HELD IN TRUST, THE PROVIDER IMMEDIATELY SHALL NOTIFY THE  
9 ADMINISTRATOR BY A METHOD APPROVED BY THE ADMINISTRATOR.  
10 UNLESS THE ADMINISTRATOR BY RULE PROVIDES OTHERWISE, WITHIN FIVE  
11 DAYS THEREAFTER, THE PROVIDER SHALL GIVE NOTICE TO THE  
12 ADMINISTRATOR DESCRIBING THE REMEDIAL ACTION TAKEN OR TO BE  
13 TAKEN.

14 (h) IF AN INDIVIDUAL TERMINATES AN AGREEMENT OR IT BECOMES  
15 REASONABLY APPARENT TO A PROVIDER THAT A PLAN HAS FAILED, THE  
16 PROVIDER SHALL PROMPTLY REFUND TO THE INDIVIDUAL ALL MONEY PAID  
17 BY OR ON BEHALF OF THE INDIVIDUAL THAT HAS NOT BEEN PAID TO  
18 CREDITORS, LESS FEES THAT ARE PAYABLE TO THE PROVIDER UNDER  
19 SECTION 12-14.5-223.

20 (i) BEFORE RELOCATING A TRUST ACCOUNT FROM ONE BANK TO  
21 ANOTHER, A PROVIDER SHALL INFORM THE ADMINISTRATOR OF THE NAME,  
22 BUSINESS ADDRESS, AND TELEPHONE NUMBER OF THE NEW BANK. AS  
23 SOON AS PRACTICABLE, THE PROVIDER SHALL INFORM THE  
24 ADMINISTRATOR OF THE ACCOUNT NUMBER OF THE TRUST ACCOUNT AT  
25 THE NEW BANK.

26 **12-14.5-223. Fees and other charges.** (a) A PROVIDER MAY NOT  
27 IMPOSE DIRECTLY OR INDIRECTLY A FEE OR OTHER CHARGE ON AN

1 INDIVIDUAL OR RECEIVE MONEY FROM OR ON BEHALF OF AN INDIVIDUAL  
2 FOR DEBT-MANAGEMENT SERVICES EXCEPT AS PERMITTED BY THIS  
3 SECTION.

4 (b) A PROVIDER MAY NOT IMPOSE CHARGES OR RECEIVE PAYMENT  
5 FOR DEBT-MANAGEMENT SERVICES UNTIL THE PROVIDER AND THE  
6 INDIVIDUAL HAVE SIGNED AN AGREEMENT THAT COMPLIES WITH SECTIONS  
7 12-14.5-219 AND 12-14.5-228.

8 (c) IF AN INDIVIDUAL ASSENTS TO AN AGREEMENT, A PROVIDER  
9 MAY NOT IMPOSE A FEE OR OTHER CHARGE FOR EDUCATIONAL OR  
10 COUNSELING SERVICES, OR THE LIKE, EXCEPT AS OTHERWISE PROVIDED IN  
11 THIS SUBSECTION (c) AND SECTION 12-14.5-228 (d). THE ADMINISTRATOR  
12 MAY AUTHORIZE A PROVIDER TO CHARGE A FEE BASED ON THE NATURE  
13 AND EXTENT OF THE EDUCATIONAL OR COUNSELING SERVICES FURNISHED  
14 BY THE PROVIDER.

15 (d) SUBJECT TO ADJUSTMENT OF DOLLAR AMOUNTS PURSUANT TO  
16 SECTION 12-14.5-232 (f), THE FOLLOWING RULES APPLY:

17 (1) IF AN INDIVIDUAL ASSENTS TO A PLAN THAT CONTEMPLATES  
18 THAT CREDITORS WILL REDUCE FINANCE CHARGES OR FEES FOR LATE  
19 PAYMENT, DEFAULT, OR DELINQUENCY, THE PROVIDER MAY CHARGE:

20 (A) A FEE NOT EXCEEDING FIFTY DOLLARS FOR CONSULTATION,  
21 OBTAINING A CREDIT REPORT, SETTING UP AN ACCOUNT, AND THE LIKE;  
22 AND

23 (B) A MONTHLY SERVICE FEE, NOT TO EXCEED TEN DOLLARS TIMES  
24 THE NUMBER OF CREDITORS REMAINING IN A PLAN AT THE TIME THE FEE IS  
25 ASSESSED, BUT NOT MORE THAN FIFTY DOLLARS IN ANY MONTH.

26 (2) IF AN INDIVIDUAL ASSENTS TO A PLAN THAT CONTEMPLATES  
27 THAT CREDITORS WILL SETTLE DEBTS FOR LESS THAN THE PRINCIPAL

1 AMOUNT OF THE DEBT:

2 (A) A PROVIDER MAY CHARGE TOTAL FEES IN AN AMOUNT NOT TO  
3 EXCEED EIGHTEEN PERCENT OF THE PRINCIPAL AMOUNT OF THE DEBT,  
4 WHICH SHALL INCLUDE, SUBJECT TO SECTION 12-14.5-219 (d), A FEE FOR  
5 CONSULTATION, OBTAINING A CREDIT REPORT, SETTING UP AN ACCOUNT,  
6 AND THE LIKE, IN AN AMOUNT NOT EXCEEDING FOUR PERCENT OF THE  
7 PRINCIPAL AMOUNT OF THE DEBT.

*→ 5% diff (\$400)*

8 (B) TOTAL FEES MAY BE COLLECTED OVER NO LESS THAN HALF OF  
9 THE LENGTH OF THE PLAN AS ESTIMATED AT THE INCEPTION OF THE PLAN  
10 UNLESS ACCELERATED BY THE INDIVIDUAL OR UNTIL OFFERS OF  
11 SETTLEMENT BY CREDITORS ARE OBTAINED ON AT LEAST HALF OF THE  
12 DEBTS ENROLLED TO PROVIDER.

*+ Monthly service not to exceed \$10, etc. not more than \$50*

13 (C) IN NO CASE SHALL AGGREGATE FEES EXCEED EIGHTEEN  
14 PERCENT OF THE TOTAL PRINCIPAL AMOUNT OF THE DEBT.

15 (D) NOTWITHSTANDING THE OTHER SUBPARAGRAPHS OF THIS  
16 SUBPARAGRAPH (2), NO DEBTOR WHO COMPLETES ALL OF HIS OR HER  
17 OBLIGATIONS UNDER THE AGREEMENT MAY BE CHARGED FEES SUCH THAT  
18 THOSE FEES, WHEN ADDED TO THE AGGREGATE OF OFFERS OF SETTLEMENT  
19 OBTAINED BY PROVIDER FOR THE DEBTOR, EXCEEDS THE PRINCIPAL  
20 AMOUNT OF THE DEBT.

21 (3) A PROVIDER MAY NOT IMPOSE OR RECEIVE FEES UNDER BOTH  
22 PARAGRAPHS (1) AND (2) OF THIS SUBSECTION (d).

23 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12-14.5-228 (d),  
24 IF AN INDIVIDUAL DOES NOT ASSENT TO AN AGREEMENT, A PROVIDER MAY  
25 RECEIVE FOR EDUCATIONAL AND COUNSELING SERVICES IT PROVIDES TO  
26 THE INDIVIDUAL A FEE NOT EXCEEDING ONE HUNDRED DOLLARS OR, WITH  
27 THE APPROVAL OF THE ADMINISTRATOR, A LARGER FEE. THE

1 ADMINISTRATOR MAY APPROVE A FEE LARGER THAN ONE HUNDRED  
2 DOLLARS IF THE NATURE AND EXTENT OF THE EDUCATIONAL AND  
3 COUNSELING SERVICES WARRANT THE LARGER FEE.

4 (5) IN NO CASE SHALL AGGREGATE FEES EXCEED EIGHTEEN  
5 PERCENT OF THE TOTAL PRINCIPAL AMOUNT OF THE DEBT.

6 (e) IF, BEFORE THE EXPIRATION OF NINETY DAYS AFTER THE  
7 COMPLETION OR TERMINATION OF EDUCATIONAL OR COUNSELING  
8 SERVICES, AN INDIVIDUAL ASSENTS TO AN AGREEMENT, THE PROVIDER  
9 SHALL REFUND TO THE INDIVIDUAL ANY FEE PAID PURSUANT TO  
10 PARAGRAPH (4) OF SUBSECTION (d) OF THIS SECTION.

11 (f) SUBJECT TO ADJUSTMENT OF THE DOLLAR AMOUNT PURSUANT  
12 TO SECTION 12-14.5-232 (f), IF A PAYMENT TO A PROVIDER BY AN  
13 INDIVIDUAL UNDER THIS PART 2 IS DISHONORED, A PROVIDER MAY IMPOSE  
14 A REASONABLE CHARGE ON THE INDIVIDUAL, NOT TO EXCEED THE LESSER  
15 OF TWENTY-FIVE DOLLARS AND THE AMOUNT PERMITTED BY LAW OTHER  
16 THAN THIS PART 2.

17 **12-14.5-224. Voluntary contributions.** A PROVIDER MAY NOT  
18 SOLICIT A VOLUNTARY CONTRIBUTION FROM AN INDIVIDUAL OR AN  
19 AFFILIATE OF THE INDIVIDUAL FOR ANY SERVICE PROVIDED TO THE  
20 INDIVIDUAL. A PROVIDER MAY ACCEPT VOLUNTARY CONTRIBUTIONS  
21 FROM AN INDIVIDUAL BUT, UNTIL THIRTY DAYS AFTER COMPLETION OR  
22 TERMINATION OF A PLAN, THE AGGREGATE AMOUNT OF MONEY RECEIVED  
23 FROM OR ON BEHALF OF THE INDIVIDUAL MAY NOT EXCEED THE TOTAL  
24 AMOUNT THE PROVIDER MAY CHARGE THE INDIVIDUAL UNDER SECTION  
25 12-14.5-223.

26 **12-14.5-225. Voidable agreements.** (a) IF A PROVIDER IMPOSES  
27 A FEE OR OTHER CHARGE OR RECEIVES MONEY OR OTHER PAYMENTS NOT

PS ee  
13-18



1 AUTHORIZED BY SECTION 12-14.5-223 OR 12-14.5-224, THE INDIVIDUAL  
2 MAY VOID THE AGREEMENT AND RECOVER AS PROVIDED IN SECTION  
3 12-14.5-235.

4 (b) IF A PROVIDER IS NOT REGISTERED AS REQUIRED BY THIS PART  
5 2 WHEN AN INDIVIDUAL ASSENTS TO AN AGREEMENT, THE AGREEMENT IS  
6 VOIDABLE BY THE INDIVIDUAL.

7 (c) IF AN INDIVIDUAL VOIDS AN AGREEMENT UNDER SUBSECTION  
8 (b) OF THIS SECTION, THE PROVIDER DOES NOT HAVE A CLAIM AGAINST THE  
9 INDIVIDUAL FOR BREACH OF CONTRACT OR FOR RESTITUTION.

10 **12-14.5-226. Termination of agreements.** (a) IF AN INDIVIDUAL  
11 WHO HAS ENTERED INTO AN AGREEMENT FAILS FOR SIXTY DAYS TO MAKE  
12 PAYMENTS REQUIRED BY THE AGREEMENT, A PROVIDER MAY TERMINATE  
13 THE AGREEMENT.

14 (b) IF A PROVIDER OR AN INDIVIDUAL TERMINATES AN AGREEMENT,  
15 THE PROVIDER SHALL IMMEDIATELY RETURN TO THE INDIVIDUAL:

16 (1) ANY MONEY OF THE INDIVIDUAL HELD IN TRUST FOR THE  
17 BENEFIT OF THE INDIVIDUAL; AND

18 (2) SIXTY-FIVE PERCENT OF ANY PORTION OF THE SET-UP FEE  
19 RECEIVED PURSUANT TO SECTION 12-14.5-223 (d) (2) THAT HAS NOT BEEN  
20 CREDITED AGAINST SETTLEMENT FEES.

21 **12-14.5-227. Periodic reports - retention of records.** (a) A  
22 PROVIDER SHALL PROVIDE THE ACCOUNTING REQUIRED BY SUBSECTION (b)  
23 OF THIS SECTION:

24 (1) UPON CANCELLATION OR TERMINATION OF AN AGREEMENT;  
25 AND

26 (2) BEFORE CANCELLATION OR TERMINATION OF ANY AGREEMENT:

27 (A) AT LEAST ONCE EACH MONTH; AND

1 (B) WITHIN FIVE BUSINESS DAYS AFTER A REQUEST BY AN  
2 INDIVIDUAL, BUT THE PROVIDER NEED NOT COMPLY WITH MORE THAN ONE  
3 REQUEST FROM AN INDIVIDUAL IN ANY CALENDAR MONTH.

4 (b) A PROVIDER, IN A RECORD, SHALL PROVIDE EACH INDIVIDUAL  
5 FOR WHOM IT HAS ESTABLISHED A PLAN AN ACCOUNTING OF THE  
6 FOLLOWING INFORMATION:

7 (1) THE AMOUNT OF MONEY RECEIVED FROM THE INDIVIDUAL  
8 SINCE THE LAST REPORT;

9 (2) THE AMOUNTS AND DATES OF DISBURSEMENT MADE ON THE  
10 INDIVIDUAL'S BEHALF, OR BY THE INDIVIDUAL UPON THE DIRECTION OF THE  
11 PROVIDER, SINCE THE LAST REPORT TO EACH CREDITOR LISTED IN THE  
12 PLAN;

13 (3) THE AMOUNTS DEDUCTED FROM THE AMOUNT RECEIVED FROM  
14 THE INDIVIDUAL;

15 (4) THE AMOUNT HELD IN RESERVE; AND

16 (5) IF, SINCE THE LAST REPORT, A CREDITOR HAS AGREED TO  
17 ACCEPT AS PAYMENT IN FULL AN AMOUNT LESS THAN THE PRINCIPAL  
18 AMOUNT OF THE DEBT OWED BY THE INDIVIDUAL:

19 (A) THE TOTAL AMOUNT AND TERMS OF THE SETTLEMENT;

20 (B) THE AMOUNT OF THE DEBT WHEN THE INDIVIDUAL ASSENTED  
21 TO THE PLAN;

22 (C) THE AMOUNT OF THE DEBT WHEN THE CREDITOR AGREED TO  
23 THE SETTLEMENT; AND

24 (D) THE CALCULATION OF A SETTLEMENT FEE.

25 (c) A PROVIDER SHALL MAINTAIN RECORDS FOR EACH INDIVIDUAL  
26 FOR WHOM IT PROVIDES DEBT-MANAGEMENT SERVICES FOR FIVE YEARS  
27 AFTER THE FINAL PAYMENT MADE BY THE INDIVIDUAL AND PRODUCE A

1 COPY OF THEM TO THE INDIVIDUAL WITHIN A REASONABLE TIME AFTER A  
2 REQUEST FOR THEM. THE PROVIDER MAY USE ELECTRONIC OR OTHER  
3 MEANS OF STORAGE OF THE RECORDS.

4 (27) **12-14.5-228. Prohibited acts and practices.** (a) A PROVIDER  
5 MAY NOT, DIRECTLY OR INDIRECTLY:

6 (1) MISAPPROPRIATE OR MISAPPLY MONEY HELD IN TRUST;

7 (2) SETTLE A DEBT ON BEHALF OF AN INDIVIDUAL FOR MORE THAN  
8 FIFTY PERCENT OF THE ACTUAL BALANCE OF THE DEBT OWED A CREDITOR  
9 AT THE TIME OF SETTLEMENT, UNLESS THE INDIVIDUAL ASSENTS TO THE  
10 SETTLEMENT AFTER THE CREDITOR HAS ASSENTED;

11 (3) TAKE A POWER OF ATTORNEY THAT AUTHORIZES IT TO SETTLE  
12 A DEBT, UNLESS THE POWER OF ATTORNEY EXPRESSLY LIMITS THE  
13 PROVIDER'S AUTHORITY TO SETTLE DEBTS FOR NOT MORE THAN FIFTY  
14 PERCENT OF THE ACTUAL BALANCE OF THE DEBT OWED A CREDITOR AT THE  
15 TIME OF SETTLEMENT;

16 (4) EXERCISE OR ATTEMPT TO EXERCISE A POWER OF ATTORNEY  
17 AFTER AN INDIVIDUAL HAS TERMINATED AN AGREEMENT;

18 (5) INITIATE A TRANSFER FROM AN INDIVIDUAL'S ACCOUNT AT A  
19 BANK OR WITH ANOTHER PERSON UNLESS THE TRANSFER IS:

20 (A) A RETURN OF MONEY TO THE INDIVIDUAL; OR

21 (B) BEFORE TERMINATION OF AN AGREEMENT, PROPERLY  
22 AUTHORIZED BY THE AGREEMENT AND THIS PART 2, AND FOR:

23 (i) PAYMENT TO ONE OR MORE CREDITORS PURSUANT TO A PLAN;

24 OR

25 (ii) PAYMENT OF A FEE;

26 (6) OFFER A GIFT OR BONUS, PREMIUM, REWARD, OR OTHER  
27 COMPENSATION TO AN INDIVIDUAL FOR EXECUTING AN AGREEMENT;

*principal  
and  
to debt*



1 (7) OFFER, PAY, OR GIVE A GIFT OR BONUS, PREMIUM, REWARD, OR  
2 OTHER COMPENSATION TO A PERSON FOR REFERRING A PROSPECTIVE  
3 CUSTOMER, EXCEPT FOR A SALES LEAD, IF THE PERSON MAKING THE  
4 REFERRAL HAS A FINANCIAL INTEREST IN THE OUTCOME OF  
5 DEBT-MANAGEMENT SERVICES PROVIDED TO THE CUSTOMER, UNLESS  
6 NEITHER THE PROVIDER NOR THE PERSON MAKING THE REFERRAL  
7 COMMUNICATES TO THE PROSPECTIVE CUSTOMER THE IDENTITY OF THE  
8 SOURCE OF THE REFERRAL;

9 (8) RECEIVE A BONUS, COMMISSION, OR OTHER BENEFIT FOR  
10 REFERRING AN INDIVIDUAL TO A PERSON;

11 (9) STRUCTURE A PLAN IN A MANNER THAT WOULD RESULT IN A  
12 NEGATIVE AMORTIZATION OF ANY OF AN INDIVIDUAL'S DEBTS, UNLESS A  
13 CREDITOR THAT IS OWED A NEGATIVELY AMORTIZING DEBT AGREES TO  
14 REFUND OR WAIVE THE FINANCE CHARGE UPON PAYMENT OF THE  
15 PRINCIPAL AMOUNT OF THE DEBT;

16 (10) COMPENSATE ITS EMPLOYEES ON THE BASIS OF A FORMULA  
17 THAT INCORPORATES THE NUMBER OF INDIVIDUALS THE EMPLOYEE  
18 INDUCES TO ENTER INTO AGREEMENTS;

19 (11) SETTLE A DEBT OR LEAD AN INDIVIDUAL TO BELIEVE THAT A  
20 PAYMENT TO A CREDITOR IS IN SETTLEMENT OF A DEBT TO THE CREDITOR  
21 UNLESS, AT THE TIME OF SETTLEMENT, THE INDIVIDUAL RECEIVES A  
22 CERTIFICATION BY THE CREDITOR THAT THE PAYMENT IS IN FULL  
23 SETTLEMENT OF THE DEBT;

24 (12) MAKE A REPRESENTATION THAT:

25 (A) THE PROVIDER WILL FURNISH MONEY TO PAY BILLS OR  
26 PREVENT ATTACHMENTS;

27 (B) PAYMENT OF A CERTAIN AMOUNT WILL PERMIT SATISFACTION

1 OF A CERTAIN AMOUNT OR RANGE OF INDEBTEDNESS; OR

2 (C) PARTICIPATION IN A PLAN WILL OR MAY PREVENT LITIGATION,  
3 COLLECTION ACTIVITY, GARNISHMENT, ATTACHMENT, REPOSSESSION,  
4 FORECLOSURE, EVICTION, OR LOSS OF EMPLOYMENT;

5 (13) MISREPRESENT THAT IT IS AUTHORIZED OR COMPETENT TO  
6 FURNISH LEGAL ADVICE OR PERFORM LEGAL SERVICES;

7 (14) REPRESENT THAT IT IS A NOT-FOR-PROFIT ENTITY UNLESS IT  
8 IS ORGANIZED AND PROPERLY OPERATING AS A NOT-FOR-PROFIT UNDER  
9 THE LAW OF THE STATE IN WHICH IT WAS FORMED OR THAT IT IS A  
10 TAX-EXEMPT ENTITY UNLESS IT HAS RECEIVED CERTIFICATION OF  
11 TAX-EXEMPT STATUS FROM THE FEDERAL INTERNAL REVENUE SERVICE;

12 (15) TAKE A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY  
13 TO CONFESS JUDGMENT AGAINST AN INDIVIDUAL;

14 (16) EMPLOY AN UNFAIR, UNCONSCIONABLE, OR DECEPTIVE ACT  
15 OR PRACTICE, INCLUDING THE KNOWING OMISSION OF ANY MATERIAL  
16 INFORMATION; OR

17 (17) ADVISE, ENCOURAGE, OR SUGGEST TO THE INDIVIDUAL NOT  
18 TO MAKE A PAYMENT TO CREDITORS UNDER THE PLAN.

19 (b) IF A PROVIDER FURNISHES DEBT-MANAGEMENT SERVICES TO AN  
20 INDIVIDUAL, THE PROVIDER MAY NOT, DIRECTLY OR INDIRECTLY:

21 (1) PURCHASE A DEBT OR OBLIGATION OF THE INDIVIDUAL;

22 (2) RECEIVE FROM OR ON BEHALF OF THE INDIVIDUAL:

23 (A) A PROMISSORY NOTE OR OTHER NEGOTIABLE INSTRUMENT  
24 OTHER THAN A CHECK OR A DEMAND DRAFT; OR

25 (B) A POST-DATED CHECK OR DEMAND DRAFT;

26 (3) LEND MONEY OR PROVIDE CREDIT TO THE INDIVIDUAL, EXCEPT  
27 AS A DEFERRAL OF A SETTLEMENT FEE AT NO ADDITIONAL EXPENSE TO THE

1 INDIVIDUAL;

2 (4) OBTAIN A MORTGAGE OR OTHER SECURITY INTEREST FROM ANY  
3 PERSON IN CONNECTION WITH THE SERVICES PROVIDED TO THE  
4 INDIVIDUAL;

5 (5) EXCEPT AS PERMITTED BY FEDERAL LAW, DISCLOSE THE  
6 IDENTITY OR IDENTIFYING INFORMATION OF THE INDIVIDUAL OR THE  
7 IDENTITY OF THE INDIVIDUAL'S CREDITORS, EXCEPT TO:

8 (A) THE ADMINISTRATOR, UPON PROPER DEMAND;

9 (B) A CREDITOR OF THE INDIVIDUAL, TO THE EXTENT NECESSARY  
10 TO SECURE THE COOPERATION OF THE CREDITOR IN A PLAN; OR

11 (C) THE EXTENT NECESSARY TO ADMINISTER THE PLAN;

12 (6) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12-14.5-223 (d)  
13 (2), PROVIDE THE INDIVIDUAL LESS THAN THE FULL BENEFIT OF A  
14 COMPROMISE OF A DEBT ARRANGED BY THE PROVIDER;

15 (7) CHARGE THE INDIVIDUAL FOR OR PROVIDE CREDIT OR OTHER  
16 INSURANCE, COUPONS FOR GOODS OR SERVICES, MEMBERSHIP IN A CLUB,  
17 ACCESS TO COMPUTERS OR THE INTERNET, OR ANY OTHER MATTER NOT  
18 DIRECTLY RELATED TO DEBT-MANAGEMENT SERVICES OR EDUCATIONAL  
19 SERVICES CONCERNING PERSONAL FINANCE; OR

20 (8) FURNISH LEGAL ADVICE OR PERFORM LEGAL SERVICES, UNLESS  
21 THE PERSON FURNISHING THAT ADVICE TO OR PERFORMING THOSE  
22 SERVICES FOR THE INDIVIDUAL IS LICENSED TO PRACTICE LAW.

23 (c) THIS PART 2 DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN  
24 THE PRACTICE OF LAW.

25 (d) A PROVIDER MAY NOT RECEIVE A GIFT OR BONUS, PREMIUM,  
26 REWARD, OR OTHER COMPENSATION, DIRECTLY OR INDIRECTLY, FOR  
27 ADVISING, ARRANGING, OR ASSISTING AN INDIVIDUAL IN CONNECTION

1 WITH OBTAINING, AN EXTENSION OF CREDIT OR OTHER SERVICE FROM A  
2 LENDER OR SERVICE PROVIDER, EXCEPT FOR EDUCATIONAL OR  
3 COUNSELING SERVICES REQUIRED IN CONNECTION WITH A  
4 GOVERNMENT-SPONSORED PROGRAM.

5 (e) UNLESS A PERSON SUPPLIES GOODS, SERVICES, OR FACILITIES  
6 GENERALLY AND SUPPLIES THEM TO THE PROVIDER AT A COST NO GREATER  
7 THAN THE COST THE PERSON GENERALLY CHARGES TO OTHERS, A  
8 PROVIDER MAY NOT PURCHASE GOODS, SERVICES, OR FACILITIES FROM THE  
9 PERSON IF AN EMPLOYEE OR A PERSON THAT THE PROVIDER SHOULD  
10 REASONABLY KNOW IS AN AFFILIATE OF THE PROVIDER:

11 (1) OWNS MORE THAN TEN PERCENT OF THE PERSON; OR

12 (2) IS AN EMPLOYEE OR AFFILIATE OF THE PERSON.

13 (28) **12-14.5-229. Notice of litigation.** NO LATER THAN THIRTY DAYS  
14 AFTER A PROVIDER HAS BEEN SERVED WITH NOTICE OF A CIVIL ACTION FOR  
15 VIOLATION OF THIS PART 2 BY OR ON BEHALF OF AN INDIVIDUAL WHO  
16 RESIDES IN THIS STATE AT EITHER THE TIME OF AN AGREEMENT OR THE  
17 TIME THE NOTICE IS SERVED, THE PROVIDER SHALL NOTIFY THE  
18 ADMINISTRATOR IN A RECORD THAT IT HAS BEEN SUED.

19 (29) **12-14.5-230. Advertising.** A PROVIDER THAT ADVERTISES  
20 DEBT-MANAGEMENT SERVICES SHALL DISCLOSE, IN AN EASILY  
21 COMPREHENSIBLE MANNER, THE INFORMATION SPECIFIED IN SECTION  
22 12-14.5-217 (d) (3) AND (d) (4).

23 (30) **12-14.5-231. Liability for the conduct of other persons.** IF A  
24 PROVIDER DELEGATES ANY OF ITS DUTIES OR OBLIGATIONS UNDER AN  
25 AGREEMENT OR THIS PART 2 TO ANOTHER PERSON, INCLUDING AN  
26 INDEPENDENT CONTRACTOR, THE PROVIDER IS LIABLE FOR CONDUCT OF  
27 THE PERSON THAT, IF DONE BY THE PROVIDER, WOULD VIOLATE THE

1 AGREEMENT OR THIS PART 2.

2 (3) 12-14.5-232. Powers of administrator - rules. (a) THE  
3 ADMINISTRATOR MAY ACT ON ITS OWN INITIATIVE OR IN RESPONSE TO  
4 COMPLAINTS AND MAY RECEIVE COMPLAINTS, TAKE ACTION TO OBTAIN  
5 VOLUNTARY COMPLIANCE WITH THIS PART 2, AND SEEK OR PROVIDE  
6 REMEDIES AS PROVIDED IN THIS PART 2.

7 (b) THE ADMINISTRATOR MAY INVESTIGATE AND EXAMINE, IN THIS  
8 STATE OR ELSEWHERE, BY SUBPOENA OR OTHERWISE, THE ACTIVITIES,  
9 BOOKS, ACCOUNTS, AND RECORDS OF A PERSON THAT PROVIDES OR OFFERS  
10 TO PROVIDE DEBT-MANAGEMENT SERVICES, OR A PERSON TO WHICH A  
11 PROVIDER HAS DELEGATED ITS OBLIGATIONS UNDER AN AGREEMENT OR  
12 THIS PART 2, TO DETERMINE COMPLIANCE WITH THIS PART 2.  
13 INFORMATION THAT IDENTIFIES INDIVIDUALS WHO HAVE AGREEMENTS  
14 WITH THE PROVIDER SHALL NOT BE DISCLOSED TO THE PUBLIC. IN  
15 CONNECTION WITH THE INVESTIGATION, THE ADMINISTRATOR MAY:

16 (1) CHARGE THE PERSON THE REASONABLE EXPENSES  
17 NECESSARILY INCURRED TO CONDUCT THE EXAMINATION;

18 (2) REQUIRE OR PERMIT A PERSON TO FILE A STATEMENT UNDER  
19 OATH AS TO ALL THE FACTS AND CIRCUMSTANCES OF A MATTER TO BE  
20 INVESTIGATED; AND

21 (3) SEEK A COURT ORDER AUTHORIZING SEIZURE FROM A BANK AT  
22 WHICH THE PERSON MAINTAINS A TRUST ACCOUNT REQUIRED BY SECTION  
23 12-14.5-222, ANY OR ALL MONEY, BOOKS, RECORDS, ACCOUNTS, AND  
24 OTHER PROPERTY OF THE PROVIDER THAT IS IN THE CONTROL OF THE BANK  
25 AND RELATES TO INDIVIDUALS WHO RESIDE IN THIS STATE.

26 (c) THE ADMINISTRATOR MAY ADOPT RULES TO IMPLEMENT THE  
27 PROVISIONS OF THIS PART 2 IN ACCORDANCE WITH SECTION 24-4-103,

*refer cases to the A G*

*costs*

*verified oath/affirm*

*sub 11 on 2022*



1 C.R.S.

2 (d) THE ADMINISTRATOR MAY ENTER INTO COOPERATIVE  
3 ARRANGEMENTS WITH ANY OTHER FEDERAL OR STATE AGENCY HAVING  
4 AUTHORITY OVER PROVIDERS AND MAY EXCHANGE WITH ANY OF THOSE  
5 AGENCIES INFORMATION ABOUT A PROVIDER, INCLUDING INFORMATION  
6 OBTAINED DURING AN EXAMINATION OF THE PROVIDER.

7 (e) THE ADMINISTRATOR, BY RULE, SHALL ESTABLISH REASONABLE  
8 FEES TO BE PAID BY PROVIDERS FOR THE EXPENSE OF ADMINISTERING THIS  
9 PART 2.

10 (f) THE ADMINISTRATOR, BY RULE, SHALL ADOPT DOLLAR  
11 AMOUNTS INSTEAD OF THOSE SPECIFIED IN SECTIONS 12-14.5-202,  
12 12-14.5-205, 12-14.5-209, 12-14.5-213, 12-14.5-223, 12-14.5-233, AND  
13 12-14.5-235 TO REFLECT INFLATION, AS MEASURED BY THE UNITED  
14 STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR ALL  
15 URBAN CONSUMERS OR, IF THAT INDEX IS NOT AVAILABLE, ANOTHER INDEX  
16 ADOPTED BY RULE BY THE ADMINISTRATOR. THE ADMINISTRATOR SHALL  
17 ADOPT A BASE YEAR AND ADJUST THE DOLLAR AMOUNTS, EFFECTIVE ON  
18 JULY 1 OF EACH YEAR, IF THE CHANGE IN THE INDEX FROM THE BASE YEAR,  
19 AS OF DECEMBER 31 OF THE PRECEDING YEAR, IS AT LEAST TEN PERCENT.  
20 THE DOLLAR AMOUNT SHALL BE ROUNDED TO THE NEAREST ONE HUNDRED  
21 DOLLARS, EXCEPT THAT THE AMOUNTS IN SECTION 12-14.5-223 SHALL BE  
22 ROUNDED TO THE NEAREST DOLLAR.

23 (g) THE ADMINISTRATOR SHALL NOTIFY REGISTERED PROVIDERS  
24 OF ANY CHANGE IN DOLLAR AMOUNTS MADE PURSUANT TO SUBSECTION (f)  
25 OF THIS SECTION AND MAKE THAT INFORMATION AVAILABLE TO THE  
26 PUBLIC.

27 (12-14.5-233) **12-14.5-233. Administrative remedies.** (a) THE

1 ADMINISTRATOR MAY ENFORCE THIS PART 2 AND RULES ADOPTED UNDER  
2 THIS PART 2 BY TAKING ONE OR MORE OF THE FOLLOWING ACTIONS:

3 (1) ORDERING A PROVIDER OR A DIRECTOR, EMPLOYEE, OR OTHER  
4 AGENT OF A PROVIDER TO CEASE AND DESIST FROM ANY VIOLATIONS;

5 (2) ORDERING A PROVIDER OR A PERSON THAT HAS CAUSED A  
6 VIOLATION TO CORRECT THE VIOLATION, INCLUDING MAKING RESTITUTION  
7 OF MONEY OR PROPERTY TO A PERSON AGGRIEVED BY A VIOLATION;

8 (3) SUBJECT TO ADJUSTMENT OF THE DOLLAR AMOUNT PURSUANT  
9 TO SECTION 12-14.5-232 (f), IMPOSING ON A PROVIDER OR A PERSON THAT  
10 HAS CAUSED A VIOLATION A CIVIL PENALTY NOT EXCEEDING TEN  
11 THOUSAND DOLLARS FOR EACH VIOLATION;

*slight  
diff. lang.  
-ant's  
same*

12 (4) PROSECUTING A CIVIL ACTION TO:

13 (A) ENFORCE AN ORDER; OR

14 (B) OBTAIN RESTITUTION OR AN INJUNCTION OR OTHER EQUITABLE  
15 RELIEF, OR BOTH;

16 (5) INTERVENING IN AN ACTION BROUGHT UNDER SECTION  
17 12-14.5-235.

18 (b) SUBJECT TO ADJUSTMENT OF THE DOLLAR AMOUNT PURSUANT  
19 TO SECTION 12-14.5-232 (f), IF A PERSON VIOLATES OR KNOWINGLY  
20 AUTHORIZES, DIRECTS, OR AIDS IN THE VIOLATION OF A FINAL ORDER  
21 ISSUED UNDER PARAGRAPH (1) OR (2) OF SUBSECTION (a) OF THIS SECTION,  
22 THE ADMINISTRATOR MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING  
23 TWENTY THOUSAND DOLLARS FOR EACH VIOLATION.

*-may recover  
in a  
civil act-*

24 (c) THE ADMINISTRATOR MAY MAINTAIN AN ACTION TO ENFORCE  
25 THIS PART 2 IN ANY COUNTY.

26 (d) THE ADMINISTRATOR MAY RECOVER THE REASONABLE COSTS  
27 OF ENFORCING THIS PART 2 UNDER SUBSECTIONS (a) TO (c) OF THIS

1 SECTION, INCLUDING ATTORNEY FEES BASED ON THE HOURS REASONABLY  
2 EXPENDED AND THE HOURLY RATES FOR ATTORNEYS OF COMPARABLE  
3 EXPERIENCE IN THE COMMUNITY.

4 (e) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY TO IMPOSE  
5 UNDER SUBSECTION (a) OR (b) OF THIS SECTION, THE ADMINISTRATOR  
6 SHALL CONSIDER THE SERIOUSNESS OF THE VIOLATION, THE GOOD FAITH  
7 OF THE VIOLATOR, ANY PREVIOUS VIOLATIONS BY THE VIOLATOR, THE  
8 DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC, THE NET WORTH  
9 OF THE VIOLATOR, AND ANY OTHER FACTOR THE ADMINISTRATOR  
10 CONSIDERS RELEVANT TO THE DETERMINATION OF THE CIVIL PENALTY.

11 **12-14.5-234. Suspension, revocation, or nonrenewal of**  
12 **registration.** (a) IN THIS SECTION, "INSOLVENT" MEANS:

13 (1) HAVING GENERALLY CEASED TO PAY DEBTS IN THE ORDINARY  
14 COURSE OF BUSINESS OTHER THAN AS A RESULT OF GOOD-FAITH DISPUTE;

15 (2) BEING UNABLE TO PAY DEBTS AS THEY BECOME DUE; OR

16 (3) BEING INSOLVENT WITHIN THE MEANING OF THE FEDERAL  
17 BANKRUPTCY LAW, 11 U.S.C. SEC. 101 ET SEQ., AS AMENDED.

18 (b) THE ADMINISTRATOR MAY SUSPEND, REVOKE, OR DENY  
19 RENEWAL OF A PROVIDER'S REGISTRATION IF:

20 (1) A FACT OR CONDITION EXISTS THAT, IF IT HAD EXISTED WHEN  
21 THE REGISTRANT APPLIED FOR REGISTRATION AS A PROVIDER, WOULD  
22 HAVE BEEN A REASON FOR DENYING REGISTRATION;

23 (2) THE PROVIDER HAS COMMITTED A MATERIAL VIOLATION OF  
24 THIS PART 2 OR A RULE OR ORDER OF THE ADMINISTRATOR UNDER THIS  
25 PART 2;

26 (3) THE PROVIDER IS INSOLVENT;

27 (4) THE PROVIDER OR AN EMPLOYEE OR AFFILIATE OF THE

*Court*

*Court*

*for agent*

P 45 - line 14  
fees & bond

+ tax delinquency  
child support

1 PROVIDER HAS REFUSED TO PERMIT THE ADMINISTRATOR TO MAKE AN  
2 EXAMINATION AUTHORIZED BY THIS PART 2, FAILED TO COMPLY WITH  
3 SECTION 12-14.5-232 (b) (2) WITHIN FIFTEEN DAYS AFTER REQUEST, OR  
4 MADE A MATERIAL MISREPRESENTATION OR OMISSION IN COMPLYING WITH  
5 SECTION 12-14.5-232 (b) (2); OR

6 (5) THE PROVIDER HAS NOT RESPONDED WITHIN A REASONABLE  
7 TIME AND IN AN APPROPRIATE MANNER TO COMMUNICATIONS FROM THE  
8 ADMINISTRATOR.

9 (c) IF A PROVIDER DOES NOT COMPLY WITH SECTION 12-14.5-222

10 (f) OR IF THE ADMINISTRATOR OTHERWISE FINDS THAT THE PUBLIC  
11 HEALTH, SAFETY, OR GENERAL WELFARE REQUIRES EMERGENCY ACTION,  
12 THE ADMINISTRATOR MAY ORDER A SUMMARY SUSPENSION OF THE  
13 PROVIDER'S REGISTRATION, EFFECTIVE ON THE DATE SPECIFIED IN THE  
14 ORDER.

15 (d) IF THE ADMINISTRATOR SUSPENDS, REVOKES, OR DENIES  
16 RENEWAL OF THE REGISTRATION OF A PROVIDER, THE ADMINISTRATOR  
17 MAY SEEK A COURT ORDER AUTHORIZING SEIZURE OF ANY OR ALL OF THE  
18 MONEY IN A TRUST ACCOUNT REQUIRED BY SECTION 12-14.5-222, BOOKS,  
19 RECORDS, ACCOUNTS, AND OTHER PROPERTY OF THE PROVIDER THAT ARE  
20 LOCATED IN THIS STATE.

21 (e) IF THE ADMINISTRATOR SUSPENDS OR REVOKES A PROVIDER'S  
22 REGISTRATION, THE PROVIDER MAY APPEAL AND REQUEST A HEARING  
23 PURSUANT TO SECTION 24-4-105, C.R.S. *ibid 111, ch 227*

24 (2) **12-14.5-235. Private enforcement.** (a) IF AN INDIVIDUAL VOIDS  
25 AN AGREEMENT PURSUANT TO SECTION 12-14.5-225 (b), THE INDIVIDUAL  
26 MAY RECOVER IN A CIVIL ACTION ALL MONEY PAID OR DEPOSITED BY OR  
27 ON BEHALF OF THE INDIVIDUAL PURSUANT TO THE AGREEMENT, EXCEPT

1 AMOUNTS PAID TO CREDITORS, IN ADDITION TO THE RECOVERY UNDER  
2 PARAGRAPHS (3) AND (4) OF SUBSECTION (c) OF THIS SECTION.

3 (b) IF AN INDIVIDUAL VOIDS AN AGREEMENT PURSUANT TO  
4 SECTION 12-14.5-225 (a), THE INDIVIDUAL MAY RECOVER IN A CIVIL  
5 ACTION THREE TIMES THE TOTAL AMOUNT OF THE FEES, CHARGES, MONEY,  
6 AND PAYMENTS MADE BY THE INDIVIDUAL TO THE PROVIDER, IN ADDITION  
7 TO THE RECOVERY UNDER PARAGRAPH (4) OF SUBSECTION (c) OF THIS  
8 SECTION.

9 (c) SUBJECT TO SUBSECTION (d) OF THIS SECTION, AN INDIVIDUAL  
10 WITH RESPECT TO WHOM A PROVIDER VIOLATES THIS PART 2 MAY RECOVER  
11 IN A CIVIL ACTION FROM THE PROVIDER AND ANY PERSON THAT CAUSED  
12 THE VIOLATION:

13 (1) COMPENSATORY DAMAGES FOR INJURY, INCLUDING  
14 NONECONOMIC INJURY, CAUSED BY THE VIOLATION;

15 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS  
16 SECTION AND SUBJECT TO ADJUSTMENT OF THE DOLLAR AMOUNT  
17 PURSUANT TO SECTION 12-14.5-232 (f), WITH RESPECT TO A VIOLATION OF  
18 SECTION 12-14.5-217, 12-14.5-219 TO 12-14.5-224, 12-14.5-227, OR  
19 12-14.5-228 (a), (b), OR (d), THE GREATER OF THE AMOUNT RECOVERABLE  
20 UNDER PARAGRAPH (1) OF THIS SUBSECTION (c) OR FIVE THOUSAND  
21 DOLLARS;

22 (3) PUNITIVE DAMAGES; AND

23 (4) REASONABLE ATTORNEY FEES AND COSTS.

24 (d) IN A CLASS ACTION, EXCEPT FOR A VIOLATION OF SECTION  
25 12-14.5-228 (a) (5), THE MINIMUM DAMAGES PROVIDED IN PARAGRAPH (2)  
26 OF SUBSECTION (c) OF THIS SECTION DO NOT APPLY.

27 (e) IN ADDITION TO THE REMEDY AVAILABLE UNDER SUBSECTION

1 (c) OF THIS SECTION, IF A PROVIDER VIOLATES AN INDIVIDUAL'S RIGHTS  
2 UNDER SECTION 12-14.5-220, THE INDIVIDUAL MAY RECOVER IN A CIVIL  
3 ACTION ALL MONEY PAID OR DEPOSITED BY OR ON BEHALF OF THE  
4 INDIVIDUAL PURSUANT TO THE AGREEMENT, EXCEPT FOR AMOUNTS PAID  
5 TO CREDITORS.

6 (f) A PROVIDER IS NOT LIABLE UNDER THIS SECTION FOR A  
7 VIOLATION OF THIS PART 2 IF THE PROVIDER PROVES THAT THE VIOLATION  
8 WAS NOT INTENTIONAL AND RESULTED FROM A GOOD-FAITH ERROR  
9 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY  
10 ADAPTED TO AVOID THE ERROR. AN ERROR OF LEGAL JUDGMENT WITH  
11 RESPECT TO A PROVIDER'S OBLIGATIONS UNDER THIS PART 2 IS NOT A  
12 GOOD-FAITH ERROR. IF, IN CONNECTION WITH A VIOLATION, THE PROVIDER  
13 HAS RECEIVED MORE MONEY THAN AUTHORIZED BY AN AGREEMENT OR  
14 THIS PART 2, THE DEFENSE PROVIDED BY THIS SUBSECTION (f) IS NOT  
15 AVAILABLE UNLESS THE PROVIDER REFUNDS THE EXCESS WITHIN TWO  
16 BUSINESS DAYS AFTER LEARNING OF THE VIOLATION.

17 (g) THE ADMINISTRATOR SHALL ASSIST AN INDIVIDUAL IN  
18 ENFORCING A JUDGMENT AGAINST THE SURETY BOND OR OTHER SECURITY  
19 PROVIDED UNDER SECTION 12-14.5-213 OR 12-14.5-214.

20 **12-14.5-236. Violation of unfair or deceptive practices statute.**  
21 IF AN ACT OR PRACTICE OF A PROVIDER VIOLATES BOTH THIS PART 2 AND  
22 SECTION 6-1-105, C.R.S., AN INDIVIDUAL MAY NOT RECOVER UNDER BOTH  
23 FOR THE SAME ACT OR PRACTICE.

24 **12-14.5-237. Statute of limitations.** (a) AN ACTION OR  
25 PROCEEDING BROUGHT PURSUANT TO SECTION 12-14.5-233 (a), (b), OR (c)  
26 SHALL BE COMMENCED WITHIN FOUR YEARS AFTER THE CONDUCT THAT IS  
27 THE BASIS OF THE ADMINISTRATOR'S COMPLAINT.

1 (b) AN ACTION BROUGHT PURSUANT TO SECTION 12-14.5-235  
2 SHALL BE COMMENCED WITHIN TWO YEARS AFTER THE LATEST OF:

3 (1) THE INDIVIDUAL'S LAST TRANSMISSION OF MONEY TO A  
4 PROVIDER;

5 (2) THE INDIVIDUAL'S LAST TRANSMISSION OF MONEY TO A  
6 CREDITOR AT THE DIRECTION OF THE PROVIDER;

7 (3) THE PROVIDER'S LAST DISBURSEMENT TO A CREDITOR OF THE  
8 INDIVIDUAL;

9 (4) THE PROVIDER'S LAST ACCOUNTING TO THE INDIVIDUAL  
10 PURSUANT TO SECTION 12-14.5-227(a);

11 (5) THE DATE ON WHICH THE INDIVIDUAL DISCOVERED OR  
12 REASONABLY SHOULD HAVE DISCOVERED THE FACTS GIVING RISE TO THE  
13 INDIVIDUAL'S CLAIM; OR

14 (6) TERMINATION OF ACTIONS OR PROCEEDINGS BY THE  
15 ADMINISTRATOR WITH RESPECT TO A VIOLATION OF THIS PART 2.

16 (c) THE PERIOD PRESCRIBED IN PARAGRAPH (5) OF SUBSECTION (b)  
17 OF THIS SECTION IS TOLLED DURING ANY PERIOD DURING WHICH THE  
18 PROVIDER OR, IF DIFFERENT, THE DEFENDANT HAS MATERIALLY AND  
19 WILLFULLY MISREPRESENTED INFORMATION REQUIRED BY THIS PART 2 TO  
20 BE DISCLOSED TO THE INDIVIDUAL, IF THE INFORMATION SO  
21 MISREPRESENTED IS MATERIAL TO THE ESTABLISHMENT OF THE LIABILITY  
22 OF THE DEFENDANT UNDER THIS PART 2.

23 **12-14.5-238. Uniformity of application and construction.** IN  
24 APPLYING AND CONSTRUING THIS PART 2, CONSIDERATION SHALL BE GIVEN  
25 TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS  
26 SUBJECT MATTER AMONG STATES THAT ENACT IT.

27 **12-14.5-239. Relation to federal "Electronic Signatures in**

1 **Global and National Commerce Act".** THIS PART 2 MODIFIES, LIMITS,  
2 AND SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL  
3 AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES  
4 NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15  
5 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF  
6 THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC.  
7 7003 (b).

8 **12-14.5-240. Transitional provisions - application to existing**  
9 **transactions.** TRANSACTIONS ENTERED INTO BEFORE JANUARY 1, 2008,  
10 AND THE RIGHTS, DUTIES, AND INTERESTS RESULTING FROM THEM MAY BE  
11 COMPLETED, TERMINATED, OR ENFORCED AS REQUIRED OR PERMITTED BY  
12 A LAW AMENDED, REPEALED, OR MODIFIED BY THIS PART 2 AS THOUGH THE  
13 AMENDMENT, REPEAL, OR MODIFICATION HAD NOT OCCURRED.

14 **12-14.5-241. Severability.** IF ANY PROVISION OF THIS PART 2 OR  
15 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE  
16 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF  
17 THIS PART 2 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION  
18 OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 2 ARE  
19 SEVERABLE.

20 **12-14.5-242. Repeal.** THIS PART 2 IS REPEALED, EFFECTIVE JULY  
21 1, 2015. PRIOR TO SUCH REPEAL, THE FUNCTIONS OF THE ADMINISTRATOR  
22 PURSUANT TO THIS PART 2 AND THE REGISTRATION OF PROVIDERS SHALL  
23 BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

24 **SECTION 2.** 24-34-104 (46), Colorado Revised Statutes, is  
25 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26 **24-34-104. General assembly review of regulatory agencies**  
27 **and functions for termination, continuation, or reestablishment.**



1 (46) The following agencies, functions, or both, shall terminate on July  
2 1, 2015:

3 (j) THE FUNCTIONS PURSUANT TO PART 2 OF ARTICLE 14.5 OF TITLE  
4 12, C.R.S., OF THE ADMINISTRATOR DESIGNATED PURSUANT TO SECTION  
5 5-6-103, C.R.S., AND THE REGISTRATION OF DEBT-MANAGEMENT SERVICE  
6 PROVIDERS.

7 **SECTION 3.** 12-14.5-101, Colorado Revised Statutes, is  
8 amended to read:

9 **12-14.5-101. Short title.** This article PART 1 shall be known and  
10 may be cited as the "Colorado Credit Services Organization Act".

11 **SECTION 4.** 12-14.5-102 (1) (c) and (1) (d), Colorado Revised  
12 Statutes, are amended, and the said 12-14.5-102 (1) is further amended  
13 BY THE ADDITION OF A NEW PARAGRAPH, to read:

14 **12-14.5-102. Legislative declaration.** (1) The general assembly  
15 finds and declares that:

16 (c) The purposes of this article PART 1 are to provide prospective  
17 buyers of services of credit services organizations with the information  
18 necessary to make an intelligent decision regarding the purchase of those  
19 services and to protect the public from unfair or deceptive advertising and  
20 business practices; and

21 (d) This article PART 1 shall be construed liberally to achieve these  
22 purposes; AND

23 (e) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO FURTHER  
24 REGULATE THE CONDUCT OF PERSONS WHO PROVIDE CREDIT SERVICES IN  
25 ACCORDANCE WITH THIS PART 1 BY ADOPTING THE REGULATORY  
26 REQUIREMENTS CONTAINED IN PART 2 OF THIS ARTICLE.

27 **SECTION 5.** The introductory portion to 12-14.5-103, Colorado

Sunset?

1 Revised Statutes, is amended to read:

2 **12-14.5-103. Definitions.** As used in this article PART 1, unless  
3 the context otherwise requires:

4 **SECTION 6.** 12-14.5-109, Colorado Revised Statutes, is  
5 amended to read:

6 **12-14.5-109. Waivers and exemptions.** (1) Any waiver by a  
7 buyer of any part of this article PART 1 is void as against public policy.  
8 Any attempt by a credit services organization to have a buyer waive rights  
9 given by this article PART 1 is a violation of this article PART 1.

10 (2) In any proceeding involving this article PART 1, the burden of  
11 proving an exemption or an exception from a definition is upon the  
12 person claiming it.

13 **SECTION 7.** 12-14.5-110, Colorado Revised Statutes, is  
14 amended to read:

15 **12-14.5-110. Criminal penalties and injunctive relief.** (1) Any  
16 person who violates any provision of this article PART 1 commits a class  
17 1 misdemeanor and shall be punished as provided in section 18-1.3-501,  
18 C.R.S. Violating any provision of this article PART 1 with respect to any  
19 buyer shall constitute a class 1 public nuisance subject to the provisions  
20 of part 3 of article 13 of title 16, C.R.S.

21 (2) The administrator of the uniform consumer credit code,  
22 designated pursuant to section 5-6-103, C.R.S., or the district attorney of  
23 any judicial district may maintain an action to enjoin violations of this  
24 article PART 1.

25 (3) Costs and reasonable attorney fees shall be awarded to the  
26 administrator of the uniform consumer credit code or a district attorney  
27 in all injunctive actions where the administrator of the uniform consumer

1 credit code or district attorney successfully enforces this article PART 1.

2           **SECTION 8.** The introductory portion to 12-14.5-110.5 (1),  
3 Colorado Revised Statutes, is amended to read:

4           **12-14.5-110.5. Powers of administrator of the uniform**  
5 **consumer credit code and district attorney - subpoenas - hearings.**

6 (1) When the administrator of the uniform consumer credit code or  
7 district attorney has cause to believe that any person has violated or is  
8 violating any provision of this article, he PART 1, THE ADMINISTRATOR OR  
9 DISTRICT ATTORNEY may, in addition to the other powers conferred upon  
10 him THE ADMINISTRATOR OR DISTRICT ATTORNEY by this article PART 1:

11           **SECTION 9.** 12-14.5-111 (1) and (2), Colorado Revised Statutes,  
12 are amended to read:

13           **12-14.5-111. Damages.** (1) Any buyer injured by a violation of  
14 this article PART 1 or by a credit services organization's breach of contract  
15 subject to this article PART 1 may maintain an action in a court of  
16 competent jurisdiction for recovery of actual damages, plus cost of suit  
17 and reasonable attorney fees. In case of an action brought by a buyer,  
18 actual damages shall not be less than the amount paid by the buyer to the  
19 credit services organization.

20           (2) In the event of a willful violation by a credit services  
21 organization of this article PART 1 or of a contract subject to this article  
22 PART 1, a person who is injured thereby shall be awarded, in addition to  
23 the damages allowable under subsection (1) of this section, an additional  
24 amount equal to twice the actual damages awarded under subsection (1)  
25 of this section.

26           **SECTION 10.** 12-14.5-112, Colorado Revised Statutes, is  
27 amended to read:

1           **12-14.5-112. Aiding or assisting violation.** Any individual who,  
2 as a director, officer, partner, member, salesperson, agent, or  
3 representative of a credit services organization which THAT violates this  
4 article PART 1, assists or aids, directly or indirectly, in such violation shall  
5 be responsible therefor and subject to the criminal penalties, injunctive  
6 relief, and damages provided for in section 12-14.5-111 and this section.

7           **SECTION 11.** 12-14.5-113, Colorado Revised Statutes, is  
8 amended to read:

9           **12-14.5-113. Remedies cumulative.** The remedies provided for  
10 in this article PART 1 are cumulative and in addition to any other  
11 procedures or remedies for any violation or conduct provided for in any  
12 other law.

13           **SECTION 12.** Part 1 of article 14.5 of title 12, Colorado Revised  
14 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
15 read:

16           **12-14.5-114. Relation between parts of article.** IN THE EVENT  
17 OF A CONFLICT BETWEEN PART 2 OF THIS ARTICLE AND THIS PART 1, THE  
18 PROVISIONS OF PART 2 OF THIS ARTICLE SHALL CONTROL. A CREDIT  
19 SERVICE ORGANIZATION THAT ALSO PERFORMS DEBT-MANAGEMENT  
20 SERVICES SHALL COMPLY WITH THE REQUIREMENTS OF PART 2 OF THIS  
21 ARTICLE.

22           **SECTION 13. Appropriation.** (1) In addition to any other  
23 appropriation, there is hereby appropriated, out of any moneys in the  
24 uniform consumer credit code cash fund created in Section 5-6-204 (1),  
25 Colorado Revised Statutes, not otherwise appropriated, to the department  
26 of law, for allocation to the consumer protection section, for the fiscal  
27 year beginning July 1, 2007, the sum of sixty-nine thousand seven

1 hundred seventeen dollars (\$69,717), cash funds, and 1.0 FTE, or so  
2 much thereof as may be necessary, for the implementation of this act.

3 (2) In addition to any other appropriation, there is hereby  
4 appropriated, to the department of public safety, Colorado bureau of  
5 investigation, for the fiscal year beginning July 1, 2007, the sum of eleven  
6 thousand eight hundred fifty dollars (\$11,850), or so much thereof as may  
7 be necessary, for fingerprint processing services related to the  
8 implementation of this act. Of this sum, five thousand two hundred fifty  
9 dollars (\$5,250) shall be cash funds from fingerprint and name check  
10 processing fees collected by the department, and six thousand six hundred  
11 dollars (\$6,600) shall be cash funds exempt from fingerprint and name  
12 check processing fees collected by the department for transmittal to the  
13 federal bureau of investigation.

14 **SECTION 14. Effective date - applicability.** This act shall take  
15 effect January 1, 2008, and shall apply to acts occurring on or after the  
16 applicable effective date of this act.

17 **SECTION 15. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.

## Kunkel, Mark

---

**From:** Kunkel, Mark  
**Sent:** Thursday, May 17, 2007 3:51 PM  
**To:** 'pessie@patrickessie.com'; 'Caren Hanson'  
**Subject:** Changes to AB 218

**Attachments:** Colorado bill.pdf

I reviewed the Colorado bill that Caren Hanson forwarded to me, and have determined how it is different from AB 218. The differences are fairly discrete and I think that a simple amendment that enumerates the changes that you want to make is preferable to a substitute amendment. Of course, if you prefer a substitute amendment, let me know.

However, in the meantime, I will draft a simple amendment that should be finished by the end of next week. If you need it earlier than that, please let me know, and I will see what I can do. However, note that I will be out of the office all day tomorrow (i.e., Friday).

Can you answer the following questions regarding the Colorado bill? I will incorporate your answers into the simple amendment.

1. The Colorado bill has a sunset date of July 1, 2015. As a result, the Colorado requirements will not apply after that date. Do you want the same thing in Wisconsin? *NO*
2. I'm not sure what Sections 3 to 12 of the Colorado bill are supposed to do. They appear to affect a Colorado law that might not be relevant in Wisconsin. Can you give me some guidance on this? *NOT RELEVANT*
3. Section 13 of the Colorado bill creates some appropriations for administering the requirements in Colorado. Do you want to include an appropriation to DFI to administer the Wisconsin requirements? If so, how much and what funding source do you want to use? *NO APPROPRIATIONS ARE NECESSARY*

FYI: the Colorado bill that Caren Hanson forwarded to me is attached below.

---

Mark D. Kunkel  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131



Colorado bill.pdf  
(441 KB)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa0522/1  
MDK: kjf

B-NOTE

ASSEMBLY AMENDMENT,  
TO 2007 ASSEMBLY BILL 218

Fri  
5-25  
4:30pm

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 6, line 6: after that line insert:

3 “(dm) “Certified debt specialist” means an individual certified by a training  
4 program or certifying organization, approved by the division, that authenticates the  
5 competence of individuals providing education and assistance to debtors as part of  
6 the initial enrollment for debt-management services offered by a person that does  
7 not hold money for individuals with whom agreements are made.”.

8 **2.** Page 8, line 4: after that line insert:

9 “5. Not an account held by a person other than a provider or affiliate of a  
10 provider.”.

11 **3.** Page 8, line 14: delete “unless the” and substitute *creditors* a period *“creditors.”*

12 **4.** Page 8, line 15: delete lines 15 and 16.

13 **5.** Page 8, line 16: after that line insert:

1 "3. Provides debt management services only to persons that have incurred debt  
2 in the conduct of business."

3 **6.** Page 9, line 10: after that line insert:

4 "7. A member of a financial-planning profession whose members the division,  
5 by rule, determines are licensed by this state and subject to a disciplinary  
6 mechanism, code of professional responsibility, and continuing education  
7 requirement, if the member's provision of debt-management services is incidental  
8 to the provision of financial-planning services."

9 **7.** Page 9, line 24: delete that line and substitute:

10 "2. The bond or other security required under sub. (13) or (13m)."

11 **8.** Page 10, line 3: delete "\$250,000" and substitute "\$1,000,000".

12 **9.** Page 10, line 10: delete "no deductible" and substitute "a deductible of no  
13 more than \$5,000".

14 **10.** Page 10, line 11: delete that line and substitute:

15 "d. The insurance insures the applicant for claims made by individuals in this  
16 or any other state, who have".

17 **11.** Page 10, line 13: delete lines 13 and 14.

18 **12.** Page 10, line 20: delete lines 20 and 21.

19 **13.** Page 11, line 8: delete "title, name, and" and substitute "name and".

20 **14.** Page 11, line 9: delete the material beginning with <sup>the</sup> semicolon and  
21 ending with <sup>of</sup> "each person" on line 10 and substitute "and each person".

22 **15.** Page 11, line 16: delete lines 16 to 24 and substitute:



1           “(f) A statement describing, to the extent it is known or should be known by the  
2 applicant, any material civil or criminal judgment or litigation and any material  
3 administrative or enforcement action by a governmental agency in any jurisdiction  
4 against the applicant, any of its officers, directors, owners, or agents, or any person  
5 who is authorized to initiate transactions to the trust account required under sub.  
6 (21).”.

7           **16.** Page 12, line 8: after “counselors” insert “or debt specialists”.

8           **17.** Page 12, line 8: after “counselor” insert “or certified debt specialist”.

9           **18.** Page 12, line 19: delete “criminal-records” and substitute “state and  
10 national fingerprint-based criminal history records”.

11           **19.** Page 12, line 20: delete “including fingerprints,”.

12           **20.** Page 12, line 23: delete “have access” and substitute “initiate  
13 transactions”.

14           **21.** Page 13, line 1: delete “10” and substitute “5”.

15           **22.** Page 13, line 2: before the period insert “, except that, if a director receives  
16 no compensation from the provider, the applicable period shall be 2 years”.

17           **23.** Page 13, line 8: delete “A statement” and substitute “For not-for-profit  
18 providers, a statement”.

19           **24.** Page 13, line 13: delete “or 2. f.,” and substitute “2. f., or 2. g.,”.

20           **25.** Page 13, line 17: delete “10” and substitute “15”.

21           **26.** Page 13, line 20: delete “(n),” and substitute “(k), (n), (o),”.

22           **27.** Page 14, line 11: before “finds” insert “upon reasonable belief”.

change  
compensation

e after application

1           **28.** Page 14, line 16: delete “under sub. (13)” and substitute “or other security  
2 under sub. (13) or (13m)”.

3           **29.** Page 15, line 8: delete “or 2. f.” and substitute “2. f., or 2. g.”.

4           **30.** Page 15, line 12: after that line insert:

5           “(e) The division may temporarily approve a license in the event an applicant  
6 has made a timely effort to obtain a criminal-records check as required in sub. (6)  
7 (n), but for which a timely return of information has not occurred, for a reasonable  
8 period of time but no longer than 120 days, provided that the applicant has provided  
9 all other required information in the application for licensure and the division finds  
10 no reason to believe from the information that has been provided that the applicant  
11 may not provide fair and honest services to debtors under this section.”.

12           **31.** Page 15, line 14: delete “120” and substitute “90”.

13           **32.** Page 15, line 16: delete “120-day” and substitute “90-day”.

14           **33.** Page 15, line 16: delete “60” and substitute “30”.

15           **34.** Page 15, line 24: after that line insert:

16           “(am) The division shall mail an application for renewal to each provider at  
17 least 60 days prior to the expiration date of a license.”.

18           **35.** Page 16, line 5: after “bond” insert “or other security”.

19           **36.** Page 16, line 6: after “(13)” insert “or (13m)”.

20           **37.** Page 16, line 8: delete “audited” and substitute “reviewed”.

21           **38.** Page 16, line 9: before the period, insert “, except that the third renewal  
22 after initial licensure and every fourth renewal thereafter shall be audited rather  
23 than reviewed”.

change  
complaint

22

23

1           **39.** Page 16, line 13: delete “\$250,000” and substitute “\$1,000,000”.

2           **40.** Page 16, line 14: after “balance” insert “attributable to residents of  
3 Wisconsin”.

4           **41.** Page 16, line 22: delete “no deductible” and substitute “a deductible of no  
5 more than \$5,000”.

6           **42.** Page 16, line 23: delete that line and substitute:

7           “d. The insurance insures the applicant for claims made by individuals in this  
8 or any other state, who have”.

9           **43.** Page 17, line 1: delete lines 1 and 2.

10          **44.** Page 17, line 7: delete lines 7 to 9 and substitute:

11          “7. If the applicant does not hold money on behalf of any debtor, disclose for  
12 business done with debtors in this state during the preceding 12 months the number  
13 of debtors with whom the applicant has had agreements, the number of fully settled  
14 debt agreements with creditors that the applicant concluded for debtors, and an  
15 estimate of the total amount of debt under contract between applicant and debtors.”.

16          **45.** Page 17, line 12: delete “(n),” and substitute “(k), (n), (o),”.

17          **46.** Page 18, line 2: after that line insert:

18          “(f) If a licensed provider fails to file by July 1 a complete application for renewal  
19 of a license and the required renewal fee, the license shall automatically expire on  
20 that date.”.

21          **47.** Page 18, line 18: after that line insert:

22          “(d) The application is accompanied by the items required in sub. (5) (b).”.

1           **48.** Page 18, line 19: delete "A provider" and substitute "Except as otherwise  
2 provided in sub. (13m), a provider".

3           **49.** Page 20, line 14: after that line insert:

4           **"(13m) BOND REQUIRED** <sup>em dash</sup> ~~⊖~~ **SUBSTITUTE.** (a) Instead of the surety bond required  
5 by sub. (13), a provider may deliver any of the following to the division, in the amount  
6 required by sub. (13) (b), and, except as otherwise provided in subd. 2., payable or  
7 available to this state and to individuals who reside in this state when they agree to  
8 receive debt-management services from the provider, as their interests may appear,  
9 if the provider or its agent does not comply with this section:

10           1. A certificate of insurance issued by an insurance company authorized to do  
11 business in this state and rated at least "A" by a nationally recognized rating  
12 organization.

13           2. With the approval of the division, an irrevocable letter of credit, issued or  
14 confirmed by a bank approved by the division, payable upon presentation of a  
15 certificate by the division stating that the provider or its agent has not complied with  
16 this section.

17           (b) If a provider furnishes a substitute pursuant to par. (a), the provisions of  
18 sub. (13) (a), (c), (d), and (e) apply to the substitute."

19           **50.** Page 20, line 19: after "counselor" insert ", certified debt management  
20 specialist,".

21           **51.** Page 21, line 19: after "counselor" insert "or certified debt management  
22 specialist".

23           **52.** Page 27, line 18: delete "Each creditor" and substitute "If the provider  
24 holds money on behalf of the debtor, each creditor".

1           **53.** Page 27, line 21: delete "That the" and substitute "If the provider holds  
2 money on behalf of the debtor, that the".

3           **54.** Page 29, line 7: delete "principal amount of the debt" and substitute  
4 "actual balance of the debt owed at the time of settlement".

5           **55.** Page 29, line 12: delete "principal amount of the debt" and substitute  
6 "actual balance of the debt owed at the time of settlement".

7           **56.** Page 34, line 20: delete the material beginning with "a provider ~~may~~" and  
8 ending with ~~page 35, line 3~~ and substitute: *"following on" (21)*

9 *not* **"all of the following apply:"** *beginning with that line and*  
*#. Page 34, line 22: delete the material ending with page 35, line 3, and substitute:*

10           a. A provider may charge total fees in an amount not to exceed 18 percent of  
11 the principal amount of the debt, which shall include, subject to sub. (18) (d), a fee  
12 for consultation, obtaining a credit report, setting up an account, and the like, in an  
13 amount not exceeding 4 percent of the principal amount of the debt.

14           b. Total fees may be collected over no less than half of the length of the plan as  
15 estimated at the inception of the plan unless accelerated by the individual or until  
16 offers of settlement by creditors are obtained on at least half of the debts enrolled to  
17 *the* provider.

18           c. In no case shall aggregate fees exceed 18 percent of the total principal amount  
19 of the debt.

20           d. Notwithstanding subd. 2. a., 2. b., or 2. c., no debtor who completes all of his  
21 or her obligations under the agreement may be charged fees such that those fees,  
22 when added to the aggregate of offers of settlement obtained by the provider for the  
23 debtor, exceeds the principal amount of the debt."

24           **57.** Page 35, line 9: after that line insert:

1 "5. In no case shall aggregate fees exceed 18 percent of the total principal  
2 amount of the debt."

3 **58.** Page 35, line 13: delete lines 13 to 20.

4 **59.** Page 38, line 2: delete "principal amount of the debt owed a creditor" and  
5 substitute "actual balance of the debt owed a creditor at the time of settlement".

6 **60.** Page 38, line 6: delete "principal amount of the debt owed a creditor" and  
7 substitute "actual balance of the debt owed a creditor at the time of settlement".

8 **61.** Page 38, line 17: after "prospective customer," insert "except for a sales  
9 lead,".

10 **62.** Page 39, line 13: before "garnishment" insert "collection activity,".

11 **63.** Page 39, line 24: after that line insert:

12 "17. Advise, encourage, or suggest to the individual not to make a payment to  
13 creditors under the plan."

14 **64.** Page 40, line 19: delete "(f)" and substitute "(d) 2."

15 **65.** Page 45, line 15: delete "required under sub. (13)" and substitute "or other  
16 security required under sub. (13) or (13m)".

17 **66.** Page 47, line 22: delete "provided under sub. (13)" and substitute "or other  
18 security provided under sub. (13) or (13m)".

19 (END)

D-Note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0522/1dn

MDK...*gf*

*Date*

*X* Rep. Ne<sup>w</sup>comer:

This amendment incorporates the changes to the uniform act made by the Colorado bill provided by Caren Hanson. Please note the following about the amendment:

1. The Colorado bill's references to "administrator" are changed to "division," which is the Division of Banking in DFI, and the references to "bank" are changed to "financial institution."

2. The Colorado bill includes exemptions for lawyers, CPAs, and financial planners in the definition of "debt-management services." AB 218 includes exemptions for lawyers and CPAs in proposed s. 218.02 (3) (c) 5. and 6., rather than in the definition of "debt-management services." I added the exemption for financial planners to proposed s. 218.02 (3) (c) 7.

3. The Colorado bill first applies to persons who provide debt-management services on or after July 1, 2008. However, AB 218 has a delayed effective date of approximately one year. Is AB 218's delayed effective date okay? If not, let me know and I will revise the amendment.

*X* 4. The Colorado bill requires licensing fees to be deposited in Colorado's Uniform Credit Code Cash Fund. There is no comparable fund under Wisconsin law. Instead, all fees received by DFI under AB 218 will be deposited in the general fund. Under current law (i.e., s.20.144 (1) (g)), DFI may use 88% of the fees received for general program operations, including administering the requirements of the bill. *percent*

5. The Colorado bill refers to signing various documents "under penalty of false statement." AB 218 requires instead that a document must be "signed and verified under oath or affirmation," which is more consistent with Wisconsin law. Therefore, I did not make any changes to AB 218 on this issue.

6. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 includes a statement that the description of an applicant's financial analysis and initial plan shall be deemed confidential commercial data under Colorado law. I did not add a similar statement to AB 218 because I amended proposed s. 218.02 (8) to require DFI to withhold such information from public inspection and copying. Therefore, the statement is not necessary. The same is true for the provision in the Colorado bill comparable to proposed s. 218.02 (6) (o).

7. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 refers to an applicant's initial "plan," whereas AB 218 refers to an initial "budget plan." I did not affect the reference to "budget plan." Is that okay?

8. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (n) in AB 218 includes a statement that the administrator (which would be DFI) "shall be the authorized agency to receive information regarding the result of the national criminal history records check." I'm not sure why this statement is necessary and I did not include it.

9. AB 218 has the following grounds for denying a license that are not included in the Colorado bill: proposed s. 218.02 (9) (c) 2. (failure to provide bond), 4. (state tax delinquency), and 5. (failure to pay child support). I did not affect these grounds. Is that okay? See also comparable grounds for discipline in proposed s. 218.02 (33) (b) 6., (c), and (d).

10. Section 12-14.5-210 (c) of the Colorado bill provides that an applicant may continue to provide debt-management services until an application is approved or denied. However, s. 12-14.5-204 (a) prohibits a person from providing services unless the person is registered. Because s. 12-14.5-210 (c) appears to conflict with s. 12-14.5 204 (a), I did not include s. 12-14.5-210 (c).

11. Proposed s. 218.02 (21) (e) refers to a cash balance equal *or greater than* the sum of certain balances. The Colorado bill refers instead to a cash balance equal to that sum. I did not affect proposed s. 218.02 (21) (e) because I think that it is preferable to the Colorado bill.

12. Proposed s. 218.02 (31) (a) allows DFI to refer to cases to the attorney general. Although this authority is not included in the Colorado bill, I did not eliminate it. Is that okay? Also, proposed s. 218.02 (31) (b) 1. allows DFI to charge for reasonable "costs," but the Colorado refers to reasonable "expenses." DFI prefers the term "costs," so I did not change the reference to "costs." Is that okay?

13. Proposed s. 218.02 (32) allows DFI to recover civil forfeitures in a court action. The Colorado bill would allow DFI to directly impose civil forfeitures without going to court. Although some Wisconsin statutes allow agencies to directly impose civil forfeitures, the majority of civil forfeitures under Wisconsin law are imposed by courts. Therefore, I did not affect proposed s. 218.02 (32) on this issue.

14. Proposed s. 218.02 (33) (b) 4. refers to an employee, affiliate, or agent of a provider. The Colorado bill refers to an employee or affiliate, but not an agent. I did not affect the reference to an agent. Is that okay?

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0522/1dn  
MDK:kjf:rs

May 25, 2007

Rep. Newcomer:

This amendment incorporates the changes to the uniform act made by the Colorado bill provided by Caren Hanson. Please note the following about the amendment:

1. The Colorado bill's references to "administrator" are changed to "division," which is the Division of Banking in DFI, and the references to "bank" are changed to "financial institution."
2. The Colorado bill includes exemptions for lawyers, CPAs, and financial planners in the definition of "debt-management services." AB 218 includes exemptions for lawyers and CPAs in proposed s. 218.02 (3) (c) 5. and 6., rather than in the definition of "debt-management services." I added the exemption for financial planners to proposed s. 218.02 (3) (c) 7.
3. The Colorado bill first applies to persons who provide debt-management services on or after July 1, 2008. However, AB 218 has a delayed effective date of approximately one year. Is AB 218's delayed effective date okay? If not, let me know and I will revise the amendment.
4. The Colorado bill requires licensing fees to be deposited in Colorado's Uniform Credit Code Cash Fund. There is no comparable fund under Wisconsin law. Instead, all fees received by DFI under AB 218 will be deposited in the general fund. Under current law (i.e., s. 20.144 (1) (g)), DFI may use 88 percent of the fees received for general program operations, including administering the requirements of the bill.
5. The Colorado bill refers to signing various documents "under penalty of false statement." AB 218 requires instead that a document must be "signed and verified under oath or affirmation," which is more consistent with Wisconsin law. Therefore, I did not make any changes to AB 218 on this issue.
6. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 includes a statement that the description of an applicant's financial analysis and initial plan shall be deemed confidential commercial data under Colorado law. I did not add a similar statement to AB 218 because I amended proposed s. 218.02 (8) to require DFI to withhold such information from public inspection and copying. Therefore, the statement is not necessary. The same is true for the provision in the Colorado bill comparable to proposed s. 218.02 (6) (o).

7. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 refers to an applicant's initial "plan," whereas AB 218 refers to an initial "budget plan." I did not affect the reference to "budget plan." Is that okay?

8. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (n) in AB 218 includes a statement that the administrator (which would be DFI) "shall be the authorized agency to receive information regarding the result of the national criminal history records check." I'm not sure why this statement is necessary and I did not include it.

9. AB 218 has the following grounds for denying a license that are not included in the Colorado bill: proposed s. 218.02 (9) (c) 2. (failure to provide bond), 4. (state tax delinquency), and 5. (failure to pay child support). I did not affect these grounds. Is that okay? See also comparable grounds for discipline in proposed s. 218.02 (33) (b) 6., (c), and (d).

10. Section 12-14.5-210 (c) of the Colorado bill provides that an applicant may continue to provide debt-management services until an application is approved or denied. However, s. 12-14.5-204 (a) prohibits a person from providing services unless the person is registered. Because s. 12-14.5-210 (c) appears to conflict with s. 12-14.5-204 (a), I did not include s. 12-14.5-210 (c).

11. Proposed s. 218.02 (21) (e) refers to a cash balance equal *or greater than* the sum of certain balances. The Colorado bill refers instead to a cash balance equal to that sum. I did not affect proposed s. 218.02 (21) (e) because I think that it is preferable to the Colorado bill.

12. Proposed s. 218.02 (31) (a) allows DFI to refer to cases to the attorney general. Although this authority is not included in the Colorado bill, I did not eliminate it. Is that okay? Also, proposed s. 218.02 (31) (b) 1. allows DFI to charge for reasonable "costs," but the Colorado bill refers to reasonable "expenses." DFI prefers the term "costs," so I did not change the reference to "costs." Is that okay?

13. Proposed s. 218.02 (32) allows DFI to recover civil forfeitures in a court action. The Colorado bill would allow DFI to directly impose civil forfeitures without going to court. Although some Wisconsin statutes allow agencies to directly impose civil forfeitures, the majority of civil forfeitures under Wisconsin law are imposed by courts. Therefore, I did not affect proposed s. 218.02 (32) on this issue.

14. Proposed s. 218.02 (33) (b) 4. refers to an employee, affiliate, or agent of a provider. The Colorado bill refers to an employee or affiliate, but not an agent. I did not affect the reference to an agent. Is that okay?

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

**Kunkel, Mark**

---

**From:** Wesley Young [wesley@debtsa.com]  
**Sent:** Thursday, August 16, 2007 2:37 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Refund language for Debt Management Bill

Mark – it was nice talking with you today. Per our discussion, there are two different ways that we have worded the refund language in the past as listed below:

1. "The debt settlement provider shall refund 65% of any collected settlement fees for debts remaining unsettled at the time of the termination."
2. "In the event of cancellation of the contract by the debtor prior to its successful completion, a debt settlement provider shall refund 65% of any collected fees, excluding enrollment or set up fees and excluding fees earned on debt settled at the time of the termination of the contract."

The first definition contemplates that the term "settlement fee" has been defined. The second definition does not use the term settlement fee but explains in more detail what portion is refundable. Because the Wisconsin bill has defined the term "settlement fee", I chose to use the first definition in the below draft language. But if you think the second definition is clearer, we can use that one instead.

(18) (d) b. With respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65% of any collected settlement fees for debts remaining unsettled at the time of the termination.

(25)(b) 2. Sixty-five percent of any collected settlement fees for debts remaining unsettled at the time of the termination.

Hope this helps. Please feel free to call me if you would like to discuss this further. Thanks again for working on this.

Wesley Young  
TASC

**Knight, Eric**

**From:** Susie Schooff [sschooff@ekgmail.com]  
**Sent:** Friday, July 27, 2007 1:51 PM  
**To:** Knight, Eric  
**Subject:** FW: LRB 07a0522 Topic: Certified debt specialists and other changes  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Eric,

Hi there. I finally heard back from our new TASC contact. Are you ok with this? Should I email Mark Konkle? Appreciate all your help!!

Susie

Susie – per our phone call yesterday, here is the explanation of our position on items 8 and 10 of the Drafter’s notes. We have no problem with the remaining items or changes that the drafter has proposed.  
Howard – please feel free to give any input or opinion to what I have presented below.

8. The drafter wanted to remove language that stated that DFI would be the authorized agency to receive information regarding the result of the national criminal history records check. I know that we have just introduced a bill in Delaware that clarified language about the criminal history records check because, as written, the agency did not have authority to receive the records from the FBI. Out of precaution so that we don’t have to amend the bill next year if we are wrong, I would like to (1) keep this language in, and (2) add language we introduced in Delaware to amend the law that allows the agency to receive the criminal history record check.

The Delaware language tweaked for Wisconsin: “At the applicant’s expense, the results of a state and national criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. Section 534) conducted within the immediately preceding 12 months, covering every officer of the applicant and every employee or agent who is authorized to initiate transactions to the trust account required by sub. (21).”

Thus, we would also include the language: “The Division shall be the authorized agency to receive information regarding the result of the national criminal history records check.”

10. The drafter wanted to remove language that states an applicant may continue to provide debt-management services until an application is approved or denied. We would like to keep this language in, because if there are any companies legally doing business in Wisconsin currently, they should be able to continue to do business pending the decision on their application for a license under the new law.

Thanks and feel free to call me with any questions.

Wesley  
214-231-7300

*Grandfather if lic'd under current law can continue to practice*

*(3) delayed eff date (1st day of 7th month)*

*(4) 36-20 - 65% of settlement setup fee pro rata*

*218.02(4)(a) lic'd under 218.02, 2005 Wis Stat.*

*may act as an adj serv co, as defined in 218.02(1)(a), provided that the person applies for a license under 218.05*

8/15/2007

**Kunkel, Mark**

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**From:** Wesley Young [wesleyy@debtsa.com]  
**Sent:** Tuesday, August 21, 2007 9:20 AM  
**To:** Kunkel, Mark  
**Cc:** Knight, Eric  
**Subject:** RE: Changes to LRBa0522/1

Mark – I think these changes look good. Thanks so much for drafting this language. Let me know if you have any other questions – my direct dial phone number is 214-231-7300. Thanks again. Wesley.

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**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Monday, August 20, 2007 4:06 PM  
**To:** Wesley Young  
**Cc:** Knight, Eric  
**Subject:** Changes to LRBa0522/1

Here are the items that I would add to a new version of the amendment. Please review and let me know if you have any concerns. After I hear from you, I will redraft the amendment.

**1. Authority of Division of Banking to receive background check results:**

Page 12, line 19: delete lines 19 to 21 and substitute:

"(n) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding 12 months. For purposes of 28 USC 534 (a) (4), the division is the state agency authorized to receive the results of the check. The check shall cover all of the following:"

**2. Grandfathering licensees under current law:**

\*Page 49, line 24: after that line insert:

"Section 9m. Nonstatutory provisions.

(1) In this section:

(a) "Adjustment service company" has the meaning given in section 218.02 (1) (a), 2005 stats.

(b) "Debt-management services license" means a license issued under section 218.02 of the statutes, as created by this act.

(2) Notwithstanding section 218.02 (4) (a) of the statutes, as created by this act, a person that is licensed as an adjustment service company under section 218.02 (3), 2005 stats., may continue to act as an adjustment service company, provided that the person applies, no later than the first day of the 4th month beginning after the effective date of this subsection, for a debt-management services license. A person's authority to act as an adjustment service company under this subsection expires on the date the division of banking takes final action on the person's application for a debt-management services license."

**3. Delaying effective date to 6 months after passage of act:**

08/22/2007

Page 50, line 5: delete "13th" and substitute "7th".

**4. Refund of fees upon termination:**

Page 28, line 18: delete that line and substitute:

"of any collected settlement fees for debts remaining unsettled at the time of termination."

Page 36, line 20: delete lines 20 and 21 and substitute:

"2. Sixty-five percent of any collected settlement fees for debts remaining unsettled at the time of the termination.".

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Mark D. Kunkel  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131

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This message has been scanned for viruses and dangerous content by **Cautela Networks, LLC**, and is believed to be clean.

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa0522/2ins  
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**INSERT 3-9:**

1. Page 12, line 19: delete lines 19 to 21 and substitute:

“(n) At the applicant’s expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding 12 months. For purposes of 28 USC 534 (a) (4), the division is the state agency authorized to receive the results of the check. The check shall cover all of the following:”.

**INSERT 6-24:**

2. Page 28, line 18: delete that line and substitute

no II

“of any collected settlement fees for debts remaining unsettled at the time of termination.”.

**INSERT 8-3:**

3. Page 36, line 20: delete lines 20 and 21 and substitute:

“2. Sixty-five percent of any collected settlement fees for debts remaining unsettled at the time of the termination.”.

**INSERT 8-18:**

4. Page 49, line 24: after that line insert:

**“SECTION 9m. Nonstatutory provisions.**

(1) In this section:

(a) “Adjustment service company” has the meaning given in section 218.02 (1) (a), 2005 stats.

(b) “Debt-management services license” means a license issued under section 218.02 of the statutes, as created by this act.

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1 (2) Notwithstanding section 218.02 (4) (a) of the statutes, as created by this act,  
2 a person that is licensed as an adjustment service company under section 218.02 (3),  
3 2005 stats., may continue to act as an adjustment service company, provided that the  
4 person applies, no later than the first day of the 4th month beginning after the  
5 effective date of this subsection, for a debt-management services license. A person's  
6 authority to act as an adjustment service company under this subsection expires on  
7 the date the division of banking takes final action on the person's application for a  
8 debt-management services license." ✓ ✓ ✓

9 **5.** Page 50, line 5: delete "13th" and substitute "7th".





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa0522/10

MDK:kjf:rs

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TODAY

ASSEMBLY AMENDMENT,  
TO 2007 ASSEMBLY BILL 218

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bill list

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 6, line 6: after that line insert:
- 3 “(dm) “Certified debt specialist” means an individual certified by a training
- 4 program or certifying organization, approved by the division, that authenticates the
- 5 competence of individuals providing education and assistance to debtors as part of
- 6 the initial enrollment for debt-management services offered by a person that does
- 7 not hold money for individuals with whom agreements are made.”.
- 8 **2.** Page 8, line 4: after that line insert:
- 9 “5. Not an account held by a person other than a provider or affiliate of a
- 10 provider.”.
- 11 **3.** Page 8, line 14: delete “creditors, unless the” and substitute “creditors.”.
- 12 **4.** Page 8, line 15: delete lines 15 and 16.
- 13 **5.** Page 8, line 16: after that line insert:

1           “3. Provides debt management services only to persons that have incurred debt  
2 in the conduct of business.”.

3           **6.** Page 9, line 10: after that line insert:

4           “7. A member of a financial-planning profession whose members the division,  
5 by rule, determines are licensed by this state and subject to a disciplinary  
6 mechanism, code of professional responsibility, and continuing education  
7 requirement, if the member’s provision of debt-management services is incidental  
8 to the provision of financial-planning services.”.

9           **7.** Page 9, line 24: delete that line and substitute:

10          “2. The bond or other security required under sub. (13) or (13m).”.

11          **8.** Page 10, line 3: delete “\$250,000” and substitute “\$1,000,000”.

12          **9.** Page 10, line 10: delete “no deductible” and substitute “a deductible of no  
13 more than \$5,000”.

14          **10.** Page 10, line 11: delete that line and substitute:

15          “d. The insurance insures the applicant for claims made by individuals in this  
16 or any other state, who have”.

17          **11.** Page 10, line 13: delete lines 13 and 14.

18          **12.** Page 10, line 20: delete lines 20 and 21.

19          **13.** Page 11, line 8: delete “title, name, and” and substitute “name and”.

20          **14.** Page 11, line 9: delete the material beginning with “; the” and ending with  
21 “of each” on line 10 and substitute “and each”.

22          **15.** Page 11, line 16: delete lines 16 to 24 and substitute:

INSERT 3-9

1           “(f) A statement describing, to the extent it is known or should be known by the  
2 applicant, any material civil or criminal judgment or litigation and any material  
3 administrative or enforcement action by a governmental agency in any jurisdiction  
4 against the applicant, any of its officers, directors, owners, or agents, or any person  
5 who is authorized to initiate transactions to the trust account required under sub.  
6 (21).”.

7           **16.** Page 12, line 8: after “counselors” insert “or debt specialists”.

8           **17.** Page 12, line 8: after “certified counselor” insert “or certified debt  
9 specialist”.

10           **18.** Page 12, line 19: delete “criminal-records” and substitute “state and  
11 national fingerprint-based criminal history records”.

12           **19.** Page 12, line 20: delete “including fingerprints.”.

13           **20.** Page 12, line 23: delete “have access” and substitute “initiate  
14 transactions”.

15           **21.** Page 13, line 1: delete “10” and substitute “5”.

16           **22.** Page 13, line 2: after “application” insert “, except that, if a director  
17 receives no compensation from the provider, the applicable period shall be 2 years”.

18           **23.** Page 13, line 8: delete “A statement” and substitute “For not-for-profit  
19 providers, a statement”.

20           **24.** Page 13, line 13: delete “or 2. f.,” and substitute “2. f., or 2. g.”.

21           **25.** Page 13, line 17: delete “10” and substitute “15”.

22           **26.** Page 13, line 20: delete “(n),” and substitute “(k), (n), (o),”.

23           **27.** Page 14, line 11: before “finds” insert “upon reasonable belief”.

1           **28.** Page 14, line 16: delete “under sub. (13)” and substitute “or other security  
2 under sub. (13) or (13m)”.

3           **29.** Page 15, line 8: delete “or 2. f.” and substitute “2. f., or 2. g.”.

4           **30.** Page 15, line 12: after that line insert:

5           “(e) The division may temporarily approve a license in the event an applicant  
6 has made a timely effort to obtain a criminal-records check as required in sub. (6)  
7 (n), but for which a timely return of information has not occurred, for a reasonable  
8 period of time but no longer than 120 days, provided that the applicant has provided  
9 all other required information in the application for licensure and the division finds  
10 no reason to believe from the information that has been provided that the applicant  
11 may not provide fair and honest services to debtors under this section.”.

12           **31.** Page 15, line 14: delete “120” and substitute “90”.

13           **32.** Page 15, line 16: delete “120-day” and substitute “90-day”.

14           **33.** Page 15, line 16: delete “60” and substitute “30”.

15           **34.** Page 15, line 24: after that line insert:

16           “(am) The division shall mail an application for renewal to each provider at  
17 least 60 days prior to the expiration date of a license.”.

18           **35.** Page 16, line 5: after “bond” insert “or other security”.

19           **36.** Page 16, line 6: after “(13)” insert “or (13m)”.

20           **37.** Page 16, line 8: delete “audited” and substitute “reviewed”.

21           **38.** Page 16, line 9: after “application” insert “, except that the 3rd renewal  
22 after initial licensure and every 4th renewal thereafter shall be audited rather than  
23 reviewed”.

1           **39.** Page 16, line 13: delete "\$250,000" and substitute "\$1,000,000".

2           **40.** Page 16, line 14: after "balance" insert "attributable to residents of  
3 Wisconsin".

4           **41.** Page 16, line 22: delete "no deductible" and substitute "a deductible of no  
5 more than \$5,000".

6           **42.** Page 16, line 23: delete that line and substitute:

7           "d. The insurance insures the applicant for claims made by individuals in this  
8 or any other state, who have".

9           **43.** Page 17, line 1: delete lines 1 and 2.

10          **44.** Page 17, line 7: delete lines 7 to 9 and substitute:

11          "7. If the applicant does not hold money on behalf of any debtor, disclose for  
12 business done with debtors in this state during the preceding 12 months the number  
13 of debtors with whom the applicant has had agreements, the number of fully settled  
14 debt agreements with creditors that the applicant concluded for debtors, and an  
15 estimate of the total amount of debt under contract between applicant and debtors."

16          **45.** Page 17, line 12: delete "(n)," and substitute "(k), (n), (o),".

17          **46.** Page 18, line 2: after that line insert:

18          "(f) If a licensed provider fails to file by July 1 a complete application for renewal  
19 of a license and the required renewal fee, the license shall automatically expire on  
20 that date."

21          **47.** Page 18, line 18: after that line insert:

22          "(d) The application is accompanied by the items required in sub. (5) (b)."

1           **48.** Page 18, line 19: delete “A provider” and substitute “Except as otherwise  
2 provided in sub. (13m), a provider”.

3           **49.** Page 20, line 14: after that line insert:

4           “(13m) BOND REQUIRED — SUBSTITUTE. (a) Instead of the surety bond required  
5 by sub. (13), a provider may deliver any of the following to the division, in the amount  
6 required by sub. (13) (b), and, except as otherwise provided in subd. 2., payable or  
7 available to this state and to individuals who reside in this state when they agree to  
8 receive debt-management services from the provider, as their interests may appear,  
9 if the provider or its agent does not comply with this section:

10           1. A certificate of insurance issued by an insurance company authorized to do  
11 business in this state and rated at least “A” by a nationally recognized rating  
12 organization.

13           2. With the approval of the division, an irrevocable letter of credit, issued or  
14 confirmed by a bank approved by the division, payable upon presentation of a  
15 certificate by the division stating that the provider or its agent has not complied with  
16 this section.

17           (b) If a provider furnishes a substitute pursuant to par. (a), the provisions of  
18 sub. (13) (a), (c), (d), and (e) apply to the substitute.”.

19           **50.** Page 20, line 19: after “counselor” insert “, certified debt specialist,”.

20           **51.** Page 21, line 19: after “counselor” insert “or certified debt specialist”.

21           **52.** Page 27, line 18: delete “Each creditor” and substitute “If the provider  
22 holds money on behalf of the debtor, each creditor”.

23           **53.** Page 27, line 21: delete “That the” and substitute “If the provider holds  
24 money on behalf of the debtor, that the”.

INSET 6-24

1           **54.** Page 29, line 7: delete “principal amount of the debt” and substitute  
2           “actual balance of the debt owed at the time of settlement”.

3           **55.** Page 29, line 12: delete “principal amount of the debt” and substitute  
4           “actual balance of the debt owed at the time of settlement”.

5           **56.** Page 34, line 20: delete the material beginning with “a provider” and  
6           ending with “following” on line 21 and substitute “all of the following apply:”.

7           **57.** Page 34, line 22: delete the material beginning with that line and ending  
8           with page 35, line 3 and substitute:

9           “a. A provider may charge total fees in an amount not to exceed 18 percent of  
10           the principal amount of the debt, which shall include, subject to sub. (18) (d), a fee  
11           for consultation, obtaining a credit report, setting up an account, and the like, in an  
12           amount not exceeding 4 percent of the principal amount of the debt.

13           b. Total fees may be collected over no less than half of the length of the plan as  
14           estimated at the inception of the plan unless accelerated by the individual or until  
15           offers of settlement by creditors are obtained on at least half of the debts enrolled to  
16           the provider.

17           c. In no case shall aggregate fees exceed 18 percent of the total principal amount  
18           of the debt.

19           d. Notwithstanding subd. 2. a., 2. b., or 2. c., no debtor who completes all of his  
20           or her obligations under the agreement may be charged fees such that those fees,  
21           when added to the aggregate of offers of settlement obtained by the provider for the  
22           debtor, exceed the principal amount of the debt.”.

23           **58.** Page 35, line 9: after that line insert:

INSERT 8-3

1 "5. In no case shall aggregate fees exceed 18 percent of the total principal  
2 amount of the debt."

3 **59.** Page 35, line 13: delete lines 13 to 20.

4 **60.** Page 38, line 2: delete "principal amount of the debt owed a creditor" and  
5 substitute "actual balance of the debt owed a creditor at the time of settlement".

6 **61.** Page 38, line 6: delete "principal amount of the debt owed a creditor" and  
7 substitute "actual balance of the debt owed a creditor at the time of settlement".

8 **62.** Page 38, line 17: after "prospective customer," insert "except for a sales  
9 lead,".

10 **63.** Page 39, line 13: before "garnishment" insert "collection activity,".

11 **64.** Page 39, line 24: after that line insert:

12 "17. Advise, encourage, or suggest to the individual not to make a payment to  
13 creditors under the plan."

14 **65.** Page 40, line 19: delete "(f)" and substitute "(d) 2."

15 **66.** Page 45, line 15: delete "required under sub. (13)" and substitute "or other  
16 security required under sub. (13) or (13m)".

17 **67.** Page 47, line 22: delete "provided under sub. (13)" and substitute "or other  
18 security provided under sub. (13) or (13m)".

19 (END)

INSERT  
8-18